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EDWARD F. TREADWELL, LL. B.
(OF THE SAN FRANCISCO BAR)

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INTRODUCTION.

Definition and nature.—A municipal charter may be defined as *a written grant from the sovereign power conferring rights or privileges upon a municipality*. A freeholders' charter, like the one under consideration, framed under section 8 of article XI of the Constitution of California, differs in some particulars from the ordinary municipal charter, and it may be contended that it is not within the definition of such charters as given above, since it originates with the people of the city, and is simply approved or rejected by the Legislature *in toto*, "without power of alteration or amendment." This contention seems to be sustained by the early cases, it having been said in respect to such a charter: "The legislature was not the law-maker; . . . it was not charged with any duty, and to it was not delegated any power, either in framing or adopting the law." *People v. Gunn*, 85 Cal. 238, 248. See also *People v. Toal*, 85 Cal. 333. The contention, however, seems to have been fully answered in the later case of *Ex parte Sparks*, 120 Cal. 395, 399, where the Supreme Court says: "It is clear that it [the charter] is made a law by the Legislature, and becomes a law by this expression of the sovereign will

of the state. It prevails and has force as a law of the state, and is not made a law by the people of the municipality by virtue of authority delegated to them. It is proposed by the municipality, and is accepted and passed into a law by the Legislature or rejected, as it shall see fit." However, as this was only an expression of the opinion of two of the judges, the nature of such a charter is still an open question.

Such a charter has been held not to be a law passed by the Legislature within the meaning of section 13 of article VI of the Constitution, providing that "The Legislature shall fix by law the jurisdiction of any inferior courts," etc. *People v. Toal*, 85 Cal. 333. On the other hand, it has been held to be a "statute" within the meaning of section 1622 of the Civil Code, providing that all contracts may be oral, except when required by statute to be in writing. *Frick v. Los Angeles*, 115 Cal. 512.

Corporate history of San Francisco.—The City of San Francisco was created by the Act of April 15, 1850, (Stats. 1850, 223). In 1856, the City and County of San Francisco were consolidated by what is commonly known as the Consolidation Act. Act of April 19, 1856, (Stats. 1856, 145). It will be seen that both of these acts were prior to the adoption of the present Constitution. It was held, however, that notwithstanding the adoption of the Constitution, the city and county would continue to be governed by the Consolidation Act, until the electors should adopt a charter or elect to become incorporated under the general laws. *Desmond v. Dunn*, 55 Cal. 242. Under section 8 of article XI of the present Constitution

as amended in 1892, cities or cities and counties of a certain number of inhabitants may frame charters for their own government through a board of freeholders. Under this provision several attempts were made to adopt such a charter for San Francisco. Charters were prepared in 1880, 1883, 1887 and 1895, but they all met with defeat at the polls. In 1880, the Legislature adopted what is commonly known as the "McClure Charter," Act of April 24, 1880, (Stats. 1880, 137,) which purported to provide "for the organization, incorporation and government of merged and consolidated cities and counties of more than one hundred thousand population." But the Supreme Court held that the act could not apply to the City and County of San Francisco, until a majority of the electors of the corporation voting at a general election, should so determine. *Desmond v. Dunn*, 55 Cal. 242. The present charter was proposed by a Board of Freeholders March 25, 1898, ratified by a vote of the electors May 26, 1898, and approved by the Legislature January 19, 1899. Except for certain purposes, it goes into effect January 1, 1900. (See note to Schedule.)

The status of the City and County of San Francisco.—A few remarks on the political *status* of the City and County of San Francisco may not be improper at this place. As we have seen, San Francisco was first organized as a city and afterwards as a city and county. It has been held that the present city and county is a continuation of the municipal corporation known as the City of San Francisco. *People v. Supervisors*, 21 Cal. 668; *Wood v. Election Com'rs*, 58 Cal. 561. The city and county were not consolidated under

section 7 of article XI of the Constitution, and the provisions of that section are not applicable to it, but only to city and county governments merged into one municipal government after the adoption of the Constitution. *Wood v. Election Com'rs*, 58 Cal. 561, 566. But see *Desmond v. Dunn*, 55 Cal. 242, 247. Geographically, it is one of the legal subdivisions of the state, and in that respect is recognized in section 1 of article XI of the Constitution as one of the counties of the state. *Kahn v. Sutro*, 114 Cal. 316. The inhabitants, however, are not invested with county government. *Kahn v. Sutro*, 114 Cal. 316; *People v. Supervisors*, 21 Cal. 668; *Wood v. Election Com'rs*, 58 Cal. 561. Politically, it is regarded as a municipal corporation, and in matters of government is to be regarded as a city. *Wood v. Election Com'rs*, 58 Cal. 561; *Kahn v. Sutro*, 114 Cal. 316; *Denman v. Broderick*, 111 Cal. 96, 105. See also *People v. Hoge*, 55 Cal. 612. The territory over which the municipal government is exercised is a county, and for those purposes for which county officers exercise authority not derived from the charter and disconnected with municipal government, its officers are properly termed county officers. *Kahn v. Sutro*, 114 Cal. 316. See also *Miller v. Curry*, 113 Cal. 644, 646. Thus it has been held that the district attorney, sheriff, county clerk, county recorder, coroner, and public administrator are county officers, and that the mayor, attorney and counselor (city and county attorney), superintendent of streets, highways and squares, and school directors are municipal officers. *Kahn v. Sutro*, 114 Cal. 316. See also *Miller v. Curry*, 113 Cal. 644, 646. The City and County of San Francisco is included in the term "city,"

when that term is used in the Constitution or statutes of the state. *People v. Hoge*, 55 Cal. 612; *Morgan v. Menzies*, 60 Cal. 341.

Constitutional provisions relating to charters.—The new charter of the City and County of San Francisco was adopted in pursuance of section 8 of article XI of the Constitution of California, which reads as follows:

“Any city containing a population of more than three thousand five hundred inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board, or a majority of them, and returned, one copy to the mayor thereof, or other chief executive officer of such city, and the other to the recorder of the county. Such proposed charter shall then be published in two daily newspapers of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; provided, that in cities containing a population of not more than ten thousand inhabitants, such proposed charter shall be published in one such daily newspaper; and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or

amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all laws inconsistent with such charter. A copy of such charter, certified by the mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall, after the approval of such charter by the Legislature, be made, in duplicate, and deposited, one in the office of the Secretary of State, and the other, after being recorded in said recorder's office shall be deposited in the archives of the city, and thereafter all courts shall take judicial notice of said charter. The charter, so ratified, may be amended at intervals of not less than two years by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election, held at least forty days after the publication of such proposals for twenty days in a daily newspaper of general circulation in such city, and ratified by at least three fifths of the qualified electors voting thereat, and approved by the Legislature, as herein provided for the approval of the charter. In submitting any such charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others."

The following provisions of article XI of the Constitution also materially affect the government of cities and cities and counties, and are inserted herein for ready reference:

"SEC. 6. Corporations for municipal purposes shall not be created by special laws; but the Legislature, by

general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, except in municipal affairs, shall be subject to and controlled by general laws."

"SEC. 7. City and county governments may be merged and consolidated into one municipal government with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or prohibited to cities, shall be applicable to such consolidated government."

"SEC. 8½. It shall be competent, in all charters framed under the authority given by section eight of article eleven of this Constitution, to provide, in addition to those provisions allowable by this Constitution and by the laws of the state, as follows:

"1. For the constitution, regulation, government, and jurisdiction of police courts, and for the manner in which, the times at which, and the terms for which the judges of such courts shall be elected or appointed, and for the compensation of said judges and of their clerks and attaches.

"2. For the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, and the number which shall constitute any one of such boards.

"3. For the manner in which, the times at which, and the terms for which the members of the boards of police commissioners shall be elected or appointed; and for the constitution, regulation, compensation, and government of such boards, and of the municipal police force.

"4. For the manner in which, the times at which, and the terms for which the members of all boards of election shall be elected or appointed, and for the constitution, regulation, compensation, and government of such boards, and of their clerks and attaches; and for all expenses incident to the holding of any election.

"Where a city and county government has been merged and consolidated into one municipal government, it shall also be competent in any charter framed under said section eight of said article eleven, to provide for the manner in which, the times at which, and the terms for which the several county officers shall be elected or appointed; for their compensation, and for the number of deputies that each shall have, and for the compensation payable to each of such deputies."

Effect of the charter.—The Constitution provides that, upon the adoption of such a charter, "it shall become the charter of such city, or . . . city and county and shall become the organic law thereof and supersede any existing charter and all amendments thereof, and all laws inconsistent with such charter." Cal. Con., art. XI, sec. 8.

I. Charter to supersede existing charter.—The word "charter" is here used as defined above (*supra*, p. 1), and refers to any grant from the Legislature under which the city or city and county has been heretofore

governed. The Consolidation Act is such a charter, and is therefore superseded. See *Desmond v. Dunn*, 55 Cal. 242, 246; *People v. Bagley*, 85 Cal. 343, 348. The effect of the provision that the new charter shall supersede any existing charter was considered in the case of *Ex parte Sparks*, 120 Cal. 395 (approved in *Miner v. Justice's Court*, 121 Cal. 264). The facts of that case were these: The former charter of the City of Sacramento (Stats. 1877-8, 590), created a police court. In 1893 the Legislature approved a freeholders' charter for the City of Sacramento (Stats. 1893, 547). This latter charter attempted to continue the existence of the police court created by the former charter, by vesting the jurisdiction of such court in the city justice of the peace. It having been decided that a freeholders' charter could not create a police court or continue the existence of an existing one (*People v. Toal*, 85 Cal. 333; *Milner v. Reibenstein*, 85 Cal. 593; *People v. Sands*, 102 Cal. 12; *Ex parte Reilly*, 85 Cal. 632; *Ex parte Giambonini*, 117 Cal. 573), the question arose whether the new charter so far superseded the old as to destroy the police court created by it. The Supreme Court held that this was the effect of the new charter, saying (p. 398):

"The old charter is not repealed because it is so enacted in the new charter, or because its provisions are inconsistent with those of the new charter. The new charter does not abrogate the old *ex proprio vigore*, but because the Constitution declares that such consequence should follow.

"The reason of this is sufficiently obvious. It is not the passage of an ordinary law, but the establishment of a government. The new is to take the place of the old, however dissimilar, and, although some parts of the old

charter have no corresponding provisions in the new, there is no presumption that anything is continued, for the new scheme is deemed complete in itself and to provide all that is desired. That which is omitted is omitted because not desired."

It follows from this decision that the Consolidation Act and every provision thereof, whether consistent or inconsistent with the provisions of the new charter, and whether contained in or omitted from such charter, are superseded and abrogated by it.

II. Charter to supersede amendments to existing charter.—All that has been said above as to the new charter superseding the old charter is applicable to amendments to the old charter, i. e. to the Consolidation Act. These are all likewise superseded by the new charter. Cal. Con., art. XI, sec. 8; *People v. Oakland*, 92 Cal. 611. It only remains to determine what is meant by the expression "all amendments thereof."

There are two methods by which a statute may be amended: *first*, in the manner pointed out by section 24 of article IV of the Constitution, viz: by re-enacting and publishing the act revised or section amended at length as revised or amended; and *second*, by an act, complete and perfect in itself, not purporting to be amendatory, which by implication amends other legislation on the same subject. The latter class of amendments are known as amendments by implication. There seems to be nothing in the language used that limits the word "amendments" to the first class given above, and it would seem to include amendments by implication as well, for if an act, although it does not purport to be

amendatory, does in fact work an amendment to another act, it is both in fact and in law an amendment to such act. Thus it has been held that an amendment of the description of the territory of a city by proceedings to annex additional territory in accordance with section 7 of the act of March 13, 1883, is an amendment to the charter of the city and is superseded by a new freeholders' charter, and that the effect of the new charter, which omitted the annexed territory, was to detach the territory so annexed. *People v. Oakland*, 92 Cal. 611.

III. Charter to supersede laws inconsistent therewith.—The word "inconsistent" is somewhat uncertain. It would seem, however, that, since the new charter is to work a repeal of all such laws, it would have that effect in just such cases as those in which one statute will work a repeal by implication of another statute. By determining, therefore, when one statute will repeal another statute by implication, we can determine what laws will be repealed or superseded by the charter on the ground that they are "inconsistent with such charter." (For cases on this subject see 23 Am. & Eng. Ency. of Law, pp. 479 *et seq.*) The following rules have, therefore, been formulated, upon analogy to the rules governing the repeal of statutes by implication, and it is believed that they correctly represent the cases in which the charter will supersede existing laws on the ground mentioned:

1. If the charter and statute on the same subject are mutually repugnant and irreconcilable, the former will operate, in the absence of expressed intent to the contrary, to supersede the latter.

(a) If the charter in the particular in which it is contrary to an earlier statute is expressed in negative words, it supersedes the statute.

(b) If the charter confers in affirmative words larger or more restricted powers, grants wider or less extensive privileges, imposes a heavier or less grievous burden, or imposes different duties than were imposed in the same particular by a previous statute, the old and the new provisions being conflicting in their nature, it will supersede the corresponding provisions of the earlier statute.

(c) If the evident intent of the charter is to furnish the exclusive rule governing a certain case, it supersedes the earlier statute on the same subject.

2. If the charter and a previous statute are not in express terms repugnant, but the charter covers the whole subject matter of the earlier statute, and plainly shows that it was intended as a substitute for the earlier statute, it will supersede such statute, though all the provisions of the two may not be repugnant.

The provision, however, that the charter shall supersede "all laws inconsistent with such charter," is limited by the provision that it shall, except in municipal affairs, be "subject to and controlled by general laws." Cal. Con., art. XI, sec. 6. Evidently, if there be any conflict between these provisions, the provision of section six would control, since that section unmistakably makes the charter subject to all general laws, except in municipal affairs, and, therefore, when section eight provides that the charter shall supersede "all laws inconsistent with such charter," it undoubtedly means all laws to which the charter is not expressly made subject.

Charter subject to Constitution and laws.—The Constitution provides that “cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, except in municipal affairs, shall be subject to and controlled by general laws” (Cal. Con., art. XI, sec. 6); and that “any city containing a population of more than three thousand five hundred inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this state” (Cal. Con., art. XI, sec. 8).

I. Charter subject to Constitution.—On the general proposition that the charter is subject to the Constitution of the state, little need be said. See *People v. Bagley*, 85 Cal. 343, 348. It has been held that this provision does not apply to charters already in existence at the time of the adoption of the Constitution. Such charters are not abrogated because not consistent with the Constitution: *Desmond v. Dunn*, 55 Cal. 242, 249; approved in *Dougherty v. Dunn*, 3 Pac. Rep. 412. But obviously any provision of a charter framed or adopted by authority of the Constitution, which is contrary to the Constitution, is invalid and inoperative. Thus it has been held that it is not competent for the Legislature to establish police courts in a city by a freeholders' charter of such city. *People v. Toal*, 85 Cal. 333; 23 Pac. Rep. 303; *Milner v. Reibenstein*, 85 Cal. 593; *People v. Sands*, 102 Cal. 12; *Ex parte Reilly*, 85 Cal. 632; *Ex parte Giambonini*, 117 Cal. 573; *Ex parte Sparks*, 120 Cal. 395; *Miner v. Justice's Court*, 121 Cal. 264.

II. Charter subject to general laws.*—It is well settled that charters, such as the new charter of the City and County of San Francisco, are subject to and controlled by the general laws of the state. *Thomason v. Ashworth*, 73 Cal. 73; *Davies v. Los Angeles*, 86 Cal. 37; *Brooks v. Fischer*, 79 Cal. 173; *Hellman v. Shoulters*, 114 Cal. 136; *People v. Coronado*, 100 Cal. 571. The provision of the Constitution on this subject is so plain as hardly to admit of doubt. But, although it has always been admitted that such a charter is subject to general laws, there have been many earnest attempts to narrow the meaning of the expression "general laws." Thus Mr. Justice McKinstry in his dissenting opinion in *Thomason v. Ashworth*, 73 Cal. 73, 92, would limit the term to such laws as "laws relating to the organization of the Superior Courts, laws defining crimes and civil rights, regulating the mode of contracting; perhaps all laws which confer rights or impose duties upon all the people, or it may be a portion of the people, of the state, but which are not local in that they apply only to the people within particular places less than the whole state." Likewise, Mr. Justice Sharpstein in his dissenting opinion in *Staudé v. Election Com'rs*, 61 Cal. 313, 325, maintains that the term refers only to "matters not specially provided for in charters which existed at the date of the adoption of the Constitution." So Mr. Justice Fox, in his concurring opinion in *Davies v. Los Angeles*, 86 Cal. 37, 55, in which he dissents from the views of the court on this subject, would limit the expression

*In considering this subject no regard has been taken of the late amendment to section 6 of article XI of the Constitution exempting such charters from the effect of general laws in "municipal affairs." This matter is considered hereafter. See p. 19.

“general laws” to those laws which apply throughout the state, governing all persons and all places in the state. Notwithstanding these opinions, it is now well settled that the term “general laws” as used in section 6 of article XI of the Constitution has the same meaning as when used elsewhere in the Constitution (see Cal. Con., art. I, sec. 11; art. IV, sec. 25, subdiv. 33), and that charters adopted both before and after the adoption of the Constitution, as to matters contained in or omitted from such charters, are subject to and controlled by such general laws. The entire charter, however, is not invalid simply because a few of its provisions may conflict with general statutes in force. *Brooks v. Fischer*, 79 Cal. 173. Prior to the late amendment to section 6 of article XI of the Constitution, the only exception to the rule that municipal charters are subject to general laws was that the term “general laws” does not include general laws for the incorporation, organization, and classification of cities and towns. *Thomason v. Ruggles*, 69 Cal. 465, 477.

Meaning of the term “general laws.”—As thus understood, the following general rules may be laid down by which to determine what are and what are not “general laws”:

1. General laws are those which operate alike upon all persons to whom they apply and apply equally to all persons in the same category within the jurisdiction of the law-making power. *Cody v. Murphey*, 89 Cal. 522.

2. A law applicable to all counties, or all counties of a class, as made or authorized by the Constitution, is a general law; and whether there be few or many counties

to which its provisions apply is a matter of no consequence. *Brooks v. Hyde*, 37 Cal. 366; *Summerland v. Bicknell*, 111 Cal. 567; *Farnum v. Warner*, 104 Cal. 677; *Kumler v. Supervisors*, 103 Cal. 393; *Mintzer v. Schilling*, 117 Cal. 361.

3. A law affecting all municipal corporations of a class, as made or authorized by the Constitution, is a general law. *Thomason v. Ashworth*, 73 Cal. 73.

4. A law which applies equally to all persons embraced in a class founded upon some natural, intrinsic, or constitutional distinction is a general law. *Pasadena v. Stimson*, 91 Cal. 238; *Abeel v. Clark*, 84 Cal. 226; *McDonald v. Conniff*, 99 Cal. 386; *Darcy v. San Jose*, 104 Cal. 642; *People v. C. P. R. R. Co.*, 105 Cal. 576.

5. A law which applies only to part of a class,—which relates not to *genus*, but only to *species*,—is not a general, but a special, law. *People v. C. P. R. R. Co.*, 83 Cal. 393.

6. A law which confers particular privileges or imposes peculiar disabilities or burdensome conditions, in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law, is not a general, but a special, law. *Pasadena v. Stimson*, 91 Cal. 238; *Bloss v. Lewis*, 109 Cal. 493; *Bruch v. Colombet*, 104 Cal. 347; *Turner v. Siskiyou*, 109 Cal. 332; *Marsh v. Supervisors*, 111 Cal. 368.

Following these general rules it has been held that the following laws are general and supersede the charters of the cities to which they apply: An act to provide for the improvement of streets, etc., and the construc-

tion of sewers within municipalities (*Thomason v. Ashworth*, 73 Cal. 73; *Thomason v. Ruggles*, 69 Cal. 465); an act to provide for police courts in cities having thirty thousand and under one hundred thousand inhabitants and to provide for officers thereof (*People v. Henshaw*, 76 Cal. 436; *Ex parte Ah You*, 82 Cal. 339); the general provisions of the Political Code as to the control of schools by the Board of Education (*Kennedy v. Board of Education*, 82 Cal. 483, 492); an act regulating and reducing the salaries of all officers of counties of the thirty-fifth class (*Cody v. Murphey*, 89 Cal. 522); an act to provide for the laying out, opening, etc., any street, etc., within municipalities (*Davies v. Los Angeles*, 86 Cal. 37); an act classifying municipal corporations (*Pritchett v. Stanislaus Co.*, 73 Cal. 310); an act providing for a police court in each of the incorporated cities and counties, cities, and towns of the state (*In re Carrillo*, 66 Cal. 3); the provision of section 103 of the Code of Civil Procedure, that two justices of the peace are to be elected in every city having twenty thousand and not more than one hundred thousand inhabitants (*Bishop v. Oakland*, 58 Cal. 572); the provision of section 1001 of the Civil Code and of section 1238 of the Code of Civil Procedure, that any person may acquire private property by condemnation for canals, etc., for conducting water for the use of any county, city, city and county, village, or town (*Santa Cruz v. Enright*, 95 Cal. 105); an act to provide for the disincorporation of municipal corporations of the sixth class (*Mintzer v. Schilling*, 117 Cal. 361); an act regulating the compensation of the auditor and his clerk, applying uniformly to all counties of the twentieth class (*Farnum v. War-*

ner, 104 Cal. 677) ; an act making special provision as to percentages upon taxes collected by assessors of counties of the second class (*Summerland v. Bicknell*, 111 Cal. 567) ; a provision of an act fixing the compensation of officers in "every existing county of the state whose class is changed by having a portion of its territory detached and put into a new county" (*Kumler v. Supervisors*, 103 Cal. 393).

On the other hand, the following have been held not to be general laws: The act known as the "McClure Charter," since it did not provide, first, for the incorporation of all corporations for municipal purposes; nor, second, for the incorporation of all cities and towns; nor, third, for the incorporation of all city and county governments, which have been or may hereafter become merged and consolidated into one municipal government (*Desmond v. Dunn*, 55 Cal. 242) ; an act providing a special method of collecting fees in cities and cities and counties having a population of over one hundred thousand inhabitants (*Rauer v. Williams*, 118 Cal. 401) ; an act authorizing the district attorney of counties of the eighth class to appoint an assistant (*Walser v. Austin*, 104 Cal. 128) ; an act giving discretion to the judge of a court in the counties of a specified class as to the allowance of witness fees in criminal cases (*Turner v. Siskiyou*, 109 Cal. 332) ; an act providing that in counties of the thirty-third class, in addition to the prescribed list of clerk's fees in respect to estates of deceased persons, the clerk shall collect ten dollars for each five thousand dollars, and one dollar for each additional one thousand dollars in value, as shown by the inventory (*Bloss v. Lewis*, 109 Cal. 493) ; an act providing for boards of elec-

tion commissioners in cities and cities and counties having one hundred and fifty thousand or more inhabitants (*Denman v. Broderick*, 111 Cal. 96) ; the Primary Election Law, which was confined in its operation and effect to counties of the first and second class (*Marsh v. Supervisors*, 111 Cal. 368). See also: *People v. Howard*, 94 Cal. 73; *Ex parte Armstrong*, 84 Cal. 655; *Ex parte Taylor*, 87 Cal. 91.

Meaning of the term "municipal affairs."—In 1896 section six of article XI of the Constitution was amended so as to exempt municipal charters from the effect of general laws in "municipal affairs." That this amendment greatly limits the effect of the provision as explained above is evident, and the extent of the limitation depends upon the meaning to be attributed to the expression "municipal affairs." The provision has only been before the Supreme Court once as yet, in the case of *Morton v. Broderick*, 118 Cal. 474. In 1897 the Legislature passed an act "to require ordinances and resolutions passed by the city council, or other legislative body of any municipality, to be presented to the mayor or other chief executive officer of such municipality, for his approval." (Stats. 1897, 190.) Prior to the passage of this act it was not necessary that the tax levy should be approved by the mayor of the City and County of San Francisco (*Truman v. Supervisors*, 110 Cal. 128) ; and the question arose whether or not this act changed the rule. The court said (p. 486) :

"But before this act it had been believed by the Legislature and by the people that it would be wiser to relieve charters of cities from the operation of general

laws affecting municipal affairs, lest otherwise there would be danger of the charter provisions being entirely 'frittered away.' In accordance with this belief, an amendment to the Constitution was adopted in 1895 (Stats. 1895, p. 450) providing that 'cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, *except in municipal affairs*, shall be subject to and controlled by general laws.' The amendment is found in the italicized words. The act of 1897 unquestionably deals with a municipal affair, the mode and manner of the passage of ordinances and resolutions provided for in the charter. Under this constitutional amendment, such acts now apply only to cities and to their charters which have organized under the general scheme embraced in the municipal corporation act. (Stats. 1883, p. 93.) San Francisco is not one of such cities, and the act of 1897 has, therefore, no application to it."

This decision, however, leaves much to be decided as to the meaning of this new provision of the Constitution. In considering this subject it must be borne in mind that (to use the language of the Supreme Court) "the general intention to emancipate municipalities, as far as it consistently could be done, from the control of the Legislature is apparent." (Desmond v. Dunn, 55 Cal. 242, 250.) Local government for local purposes is what the Constitution aims to accomplish. Thomason v. Ruggles, 69 Cal. 465, 470. To fully carry out this purpose, full effect should be given this latest expression of the sovereign will of the state, and to this end the expression "municipal affairs" should be liberally construed so as to fully accomplish its desired purpose.

The word "municipal" has several different mean-

ings. Sometimes it refers to the affairs of a nation, as distinguished from international affairs; municipal law, as opposed to international law. More generally it is used to distinguish the affairs of a district, whether it be a city or a county or division of a country less than the whole country or nation to which the country belongs, as distinguished from the affairs of the whole country. The meaning of the word being thus variant, its meaning must be determined from the context. The word is evidently here used in the narrow sense of anything pertaining to a city as such, and municipal affairs would seem to be those affairs that pertain distinctively to the city. To paraphrase the provision, it would seem to mean that the charter shall be subject to the general laws of the state, except such laws as, although otherwise general in their nature, apply only to the internal government of the city as such. Thus considered, the expression becomes a limitation upon the term "general laws," and seems to have been intended to avoid the effect of the decisions of the Supreme Court of the state as to the meaning of that expression. The intention seems to be to adopt the views of the dissenting opinions to which reference was made above (*ante*, p. 14), and to which reference must be made for a definition of general laws which do not relate to municipal affairs. Some aid, however, can be derived from a consideration of cases defining the word "municipal" and determining what affairs can be said to be municipal.

Under the provision of the former Constitution of California, providing that corporations for "municipal purposes" might be formed by special laws, it was held that a corporation thus formed could not engage in a

commercial enterprise, such as the purchase of shares in a steamboat company, one of whose *termini* was in such city, since such an enterprise is not a "municipal purpose,"—the court saying that the term must be confined to police or governmental purposes. *Low v. Marysville*, 5 Cal. 214. Under the same provision it was held that a reclamation district is a "public corporation for municipal purposes." *People v. Rec. Dist. No. 108*, 53 Cal. 346; *People v. La Rue*, 67 Cal. 526; *Swamp Land Dist. v. Silver*, 98 Cal. 51. As to irrigation districts, see *In re Madera Irrigation Dist.*, 92 Cal. 296. Again, it is well settled that a county is not a corporation for municipal purposes. *People v. McFadden*, 81 Cal. 489, 498; *People v. Sacramento Co.*, 45 Cal. 692; *Ex parte Selma etc. R. R. Co.*, 45 Ala. 696. Therefore, so far as San Francisco is a county, it will still be subject to general laws. A commission of a district established outside of the City of St. Louis to be used for a park for the benefit of such city is not a corporation for municipal purposes. *State v. Leffingwell*, 54 Mo. 458, 471. But a commission for the maintenance of a park for the towns of South Chicago, Hyde Park, and Lake is a municipal corporation. *People v. Salomon*, 51 Ill. 37. The corporation composed of the Board of President and Directors of the St. Louis Public Schools created to take charge of the public schools in the City of St. Louis, is not a municipal corporation. *Heller v. Stremmel*, 52 Mo. 309. On the other hand, it has been held that a commission created to regulate the system of public schools in the County of Mobile is a corporation for municipal purposes. *Horton v. Mobile School Com'rs*, 43 Ala. 598. An act making three of the city councilmen of the City

of St. Louis a commission in reference to St. Louis slough ponds and providing for declaring them nuisances and for abating the same, is an act creating a corporation for municipal purposes. *St. Louis v. Shields*, 62 Mo. 247. It has been held that the term "municipal courts" is limited to courts in cities and villages. *Norton v. Peck*, 3 Wis. 714; *State v. McArthur*, 13 Wis. 383.

Same subject continued.—From these considerations it follows that laws relating to the organization of courts of justice, laws defining crimes and civil rights, laws regulating the mode of entering into private contracts, and, generally, all laws for the government of the individual without reference to the fact that he does or does not reside in some chartered city, are general laws and do not relate to "municipal affairs," and are superior to the charter. On the other hand, it may be concluded with the same degree of confidence that laws prescribing the powers and duties of municipal officers and providing for their election and appointment, laws prescribing the mode of contracting municipal obligations, laws providing for the organization and government of the police and fire departments, and, generally, all laws which apply only to the internal government of the city and county as such, are laws which refer to "municipal affairs," and are not superior to the charter, but are all proper matters to be provided for by the charter irrespective of the provisions of the general laws on the subject. But between these classes, there is much debatable ground. For instance, are the following matters, which are attempted to be provided for

by the charter, matters which relate to "municipal affairs"? Improvement of streets (Charter, art. VI, ch. II); Opening, etc., of streets (Charter, art. VI, ch. III); Fixing rates of street railways (Charter, art. II, ch. II, sec. 1, subdiv. 27); Education (Charter, art. VII); Granting of franchises (Charter, art. II, ch. II, sec. 6).

These are all matters of the greatest moment and deserve the most careful consideration, but as they have not yet been passed upon by our courts, it would hardly be proper, even if possible, to give any decided opinion on the question, and, therefore, all that has been attempted is to give some authorities bearing upon the question when treating of the various subjects in their proper place. (See notes to the various sections cited above.)

After the above was sent to the printer, the Supreme Court rendered its decision in the case of *Popper v. Broderick*, XVII Cal. Dec. 70, which, so far as it goes, is in entire accord with what has already been said. In that case the Legislature, after the amendment to section 6 of article XI of the Constitution, passed an act increasing the salaries of the members of the police and fire departments in municipalities of the first class. The court held that the act had no force in the City and County of San Francisco, since the matter was a "municipal affair" within the meaning of that section, saying:

"Does the salary or pay of firemen and policemen belong to 'municipal affairs'? If so, then these acts of the Legislature attempting to raise and fix such salaries

have no more force in the City and County of San Francisco than the act of the said session requiring the signature of the mayor to ordinances and resolutions; and in *Morton v. Broderick* it was held that such act had no binding force in said city and county for the reason that it concerned municipal affairs, and therefore fell within the prohibition against such legislation. The government of the City and County of San Francisco may be said to be dual in its nature, and in *Kahn v. Sutro*, 114 Cal. 316, this court distinguished and classified officers that were county and officers that were municipal; and the officers of the police and fire departments are designated as peculiarly and distinctively municipal officers. It may be taken as a matter of law that the people, in adopting the constitutional amendment under consideration at the election of 1896, did so in view of this definition of municipal affairs, as distinguished from county affairs, so decided in that case. The purpose of the amendment is apparent. It was to prevent the constant tampering with matters which concern only or chiefly the municipality, under the guise of laws general in form.

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“We are of opinion that the pay of firemen and policemen clearly falls within the term *municipal affairs*.”

This decision establishes two propositions: First, that the fixing of salaries of members of the police and fire departments is a “municipal affair”; and, second, that in so far as San Francisco is a county it will still be subject to the general laws of the state.

Prefatory note.—In the following pages no attempt has been made to treat on the substantive law of municipal corporations. All that has been attempted is to give references to similar laws heretofore or now in force

in the City and County of San Francisco; to give the decisions construing those laws; and to offer some suggestions as to the validity and effect of the various provisions of the charter.

CHARTER

OF THE

CITY AND COUNTY OF SAN FRANCISCO.

ARTICLE I.

Boundaries, Rights, and Liabilities.

SECTION 1. The municipal corporation known as the City and County of San Francisco shall remain and continue a body politic and corporate, in name and in fact, by the name of the City and County of San Francisco, and by that name shall have perpetual succession; may sue and defend in all courts and places and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold and enjoy real and personal property; receive bequests, gifts and donations of all kinds of property, in fee simple, or in trust for charitable and other purposes, and do all acts necessary to carry out the purposes of such gifts, bequests and donations, with power to manage, sell, lease or otherwise dispose of the same in accordance with the terms of the gift, bequest or trust.

To remain a body politic.—Under a like provision of the Consolidation Act, it was held that the City and County of San Francisco was a continuation of the City of San Francisco. Cons. Act, (Stats. 1856, 145), art. I, sec. 1; *Frank v. Supervisors*, 21 Cal. 668; *Wood v. Election Com'rs*, 58 Cal. 561.

To hold property.—This provision does not give the city and county unlimited power to purchase real estate. Thus, under a like provision of the Consolidation Act, it was held that the board of supervisors had no authority to purchase real estate as a site for a smallpox hospital. *Von Schmidt v. Widber*, 105 Cal. 151.

As to the purchase of land of more than fifty thousand dollars in value, see Charter, art. II, ch. I, sec. 21.

To receive bequests, etc.—Section 1275 of the Civil Code provides that “corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, unless expressly authorized by statute.” A freeholders’ charter would seem to be a “statute” within the meaning of this section. *Frick v. Los Angeles*, 115 Cal. 512. Under this section of the code it was held that the City and County of San Francisco could not in general take under a will; but that a bequest in trust for charitable uses to such city and county was valid, since section 1313 of the Civil Code expressly permitted such bequests to be made to “corporations.” *Estate of Robinson*, 63 Cal. 620.

There is a question as to whether or not the provision allowing the city to receive “bequests” would authorize a devise to the city.

The execution of such trusts is confided to the board of supervisors. Charter, art. II, ch. II, sec. 1, subdiv. 30.

As to the seal of the city and county, see Charter, art. II, ch. II, sec. 1, subdiv. 23.

SEC. 2. The boundaries of the City and County of San Francisco are hereby declared to be those set forth in section thirty-nine hundred and fifty of the Political Code of California.

Boundaries.—The effect of a description of territory in a freeholders’ charter was considered in *People v. Oakland*, 92 Cal. 611. Proceedings under section 7 of the general act of March 13, 1883, (Stats. 1883, 93), to annex additional territory to the

An act directed at, and applicable to, one particular named municipality, which takes away a large part of its territory, is a special and local law within the meaning of the Constitution. *People v. San Diego*, 85 Cal. 369.

SEC. 3. The City and County of San Francisco shall continue, under this charter, to have, hold and enjoy all property, rights of property, rights of action of every nature and description of the existing municipality and is hereby declared to be the successor of the same.

SEC. 4. Suits, actions and proceedings may be brought in the name of the city and county for the recovery of any property, money or thing belonging thereto, in law or equity, or dedicated to public use therein, or for the enforcement of any rights of, or contracts with, the city and county, whether made or arising or accruing before or after the adoption of this charter. All existing suits, actions and proceedings in the courts

or elsewhere, to which the city and county is a party, shall continue to be carried on by or against the city and county.

Under a like provision, it was held that an action may be brought in the name of a county to recover money belonging to the general fund of the county. *Solano v. Neville*, 27 Cal. 465.

As to who shall prosecute and defend such actions, see Charter, art. V, ch. II, sec. 2; art. V, ch. III, sec. 2.

SEC. 5. No recourse shall be had against the city and county for damages or loss to person or property suffered or sustained by reason of the defective condition of any sidewalk, street, avenue, lane, alley, court or place, or by reason of the defective condition of any sewer, or by reason of any defective drainage, whether any of said defects originally existed, or whether they were occasioned by construction, excavation or embankment; nor shall there be any recourse against the city and county for want of repair of any sidewalk, street, avenue, lane, alley, court or place, or by want of repair of any sewer; nor shall there be any recourse against the city and county for damage to person or property suffered or sustained by reason of accident on any sidewalk, street, avenue, lane, alley, court or place, or by falling from any embankment thereon or into any excavation therein; but in any such case the person or persons on whom the law may have imposed the obligation to repair such defect in the sidewalk, street or public highway, or in the sewer, and also the officer or officers through whose official negligence such defect remains unrepaired shall be jointly and severally liable to the party injured for the damage sustained.

Liability for torts.—This section of the charter is similar to the provisions of section 24 of the act of April 25, 1862, (Stats. 1862, 391) ; section 23 of the act of April 1, 1872, (Stats. 1871-2, 804) ; section 64 of the Consolidation Act, (Stats. 1856, 145) ; and of section 23 of the act of March 18, 1885, (Stats. 1885, 147).

The similar provision of the Consolidation Act was held constitutional. *Parsons v. San Francisco*, 23 Cal. 462.

Even without such a provision expressly exempting municipal corporations from liability for injuries caused by the dangerous condition of streets and sidewalks, it has been held in this state that incorporated cities are not liable for injuries sustained by the neglect of the officers of the city in keeping its streets in repair. *Winbigler v. Los Angeles*, 45 Cal. 36 ; *Tranter v. Sacramento*, 61 Cal. 271 ; *Chope v. Eureka*, 78 Cal. 588 ; *Arnold v. San Jose*, 81 Cal. 618 ; *Barnett v. Contra Costa County*, 67 Cal. 77.

The provision making the person "on whom the law may have imposed the obligation to repair" liable for such injury is new. On whom does the law impose this obligation? It has been held that the law imposes no such duty upon the owner of land bordering upon public streets or highways, and, therefore, that he is not liable for an injury caused by the failure to make repairs. *Eustace v. Jahns*, 38 Cal. 3. On the other hand, a contractor for the repair of a street, who negligently leaves it in such a condition that some one is injured, is liable for such injury. *Barton v. McDonald*, 81 Cal. 265. The city is not liable for the negligence of the contractor, since, when the law compels the corporation to let a contract to the lowest bidder, it takes away from the corporation the responsibility arising from the acts of the person taking the contract. *James v. San Francisco*, 6 Cal. 528 ; *O'Hale v. Sacramento*, 48 Cal. 212. When the Superintendent of Streets makes the repairs, he is liable for an injury caused by his negligence in so doing. *Butler v. Ashworth*, 102 Cal. 663. In fine, whenever the law makes it the duty of a public officer to repair such defects, he will be liable under this section for any injury caused by his failure to make such repairs.

ARTICLE II.

LEGISLATIVE DEPARTMENT.

CHAPTER I.

The Board of Supervisors.

SECTION 1. The legislative power of the City and County of San Francisco shall be vested in a legislative body, which shall be designated the Board of Supervisors. Such body is also designated in this charter, the Supervisors.

The board of supervisors elected pursuant to this charter is not the same body as that provided for by the County Government Act. The supervisors provided for by this charter are municipal, and not county, officers. *Kahn v. Sutro*, 114 Cal. 316; *People v. Babcock*, 114 Cal. 559.

The County Government Act of 1897, (Stats. 1897, 452), sec. 15, provides that "in any county or city and county in which supervisorial districts have not been established by law or ordinance, and in which supervisors are now required to be elected at large, but from particular wards, the members of the board of supervisors shall be elected at large and without regard to residence." This provision was evidently intended to apply to San Francisco, but it is believed that, if so, it is unconstitutional, since the Supervisors of San Francisco are municipal, and not county, officers, and the subject of the regulation of municipal officers is not expressed in the title of the act. The provision is also in conflict with the decision in the case of *Desmond v. Dunn*, 55 Cal. 242.

SEC. 2. The Board of Supervisors shall consist of eighteen members, all of whom shall hold office for two years and be elected from the city and county at large.

Each one must be at the time of his election an elector of the city and county, and must have been such for at least five years next preceding his election. Each Supervisor shall receive an annual salary of twelve hundred dollars.

Every person who has served as Mayor of the city and county, so long as he remains a resident thereof, shall be entitled to a seat in the Board of Supervisors and to participate in its debates, but shall not be entitled to a vote nor to any compensation.

Number of supervisors.—By section 7 of article XI of the Constitution as originally adopted, it was provided that in merged and consolidated governments there should be two boards of supervisors, each to consist of twelve persons. This provision was held to apply only to general laws passed, or charters adopted, for the government of cities, subsequently to the adoption of the Constitution, and not to charters framed previously, such as the Consolidation Act. *Desmond v. Dunn*, 55 Cal. 242, 249; *People v. Pond*, 89 Cal. 141.

This provision of the Constitution was repealed by the constitutional amendment of 1894, which left the determination of the number of supervisors to the charters; it having been held that the provisions of the second chapter of title 2 of part 4 of the Political Code, relating to supervisors, does not apply to the City and County of San Francisco. *Tillson v. Ford*, 53 Cal. 701.

Qualifications.—Where the charter of a city provides that the common council shall “judge of the qualifications, elections, and returns of their own members,” the common council possesses exclusive authority to inquire into the qualifications, elections, or returns of members of the council. *People v. Metzker*, 47 Cal. 524.

Since the adoption of the new Constitution, giving the superior courts jurisdiction in proceedings in the nature of *quo warranto*, this rule has been changed, since the legislature cannot abridge the jurisdiction of the courts as defined by the Constitution. *People v. Bingham*, 82 Cal. 238.

The fact that a single member of the board of supervisors is disqualified does not invalidate the election of the other members, or prevent their organizing and acting as a board. *People v. Hecht*, 105 Cal. 621, 626.

Nor does the fact that one of the members is disqualified entitle the person who received the next highest number of votes to demand and receive a certificate of election. *Saunders v. Haynes*, 13 Cal. 145; *Crawford v. Dunbar*, 52 Cal. 36; *People v. Hecht*, 105 Cal. 621.

SEC. 3. A majority of all the members of the board shall constitute a quorum, but a less number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as the board may prescribe.

Quorum.—A majority of a board of supervisors constitutes a quorum, and a majority of the quorum of the board, a quorum being present, can perform any act which a majority of the board could perform if all were present. *People v. Harrington*, 63 Cal. 257.

If an act authorizes the board exercising the corporate authority of a city to convey land, a majority of the members of such board may make the conveyance. *San Diego v. S. D. & L. A. R. Co.*, 44 Cal. 106.

When the charter of a city vests the corporate powers in a "board of trustees to consist of five members, who shall be elected," etc., and the law provides that "at all meetings of the board a majority of the trustees shall constitute a quorum to do business," a majority of those elected can organize and act at the first meeting, as well as any subsequent meeting. *Oakland v. Carpenter*, 13 Cal. 540.

See further on this subject, note to sec. 9 of this chapter.

SEC. 4. The board shall:

1. Appoint a clerk, sergeant-at-arms, and, when authorized to do so by ordinance, such additional clerks and other assistants as may be deemed necessary.

2. Establish rules for its proceedings.

3. Keep a journal of its proceedings, and allow the same to be published. The ayes and noes shall on demand of any member be taken and entered therein.

4. Have authority to punish its members for disorderly or contemptuous behavior in its presence.

SEC. 5. The Mayor shall be the presiding officer of the Board of Supervisors. In the absence of the Mayor the board shall appoint a presiding officer pro tempore from its own members, who shall have the same right to vote as other members.

See Charter, art. IV, ch. I, sec. 5.

SEC. 6. The board shall meet on Monday of each week, or if that day be a legal holiday, then on the next day. The board shall not adjourn to any other place than to its regular place of meeting, except in case of great necessity or emergency. The meetings of the board shall be public.

SEC. 7. The Clerk of the board, when requested to do so, shall administer oaths and affirmations, without charge, in all matters pertaining to the affairs of his office, and shall perform such services as may be prescribed by the board. He shall have the custody of the seal, and of all leases, grants and other documents, records and papers of the city and county. His signature shall be necessary to all leases, grants and conveyances of the city and county.

As to the clerk of the board of supervisors, consult the following cases: *People v. E. L. & Y. C. Co.*, 48 Cal. 143; *San Diego v. Seifert*, 97 Cal. 594; *Santa Clara v. S. P. R. R. Co.*, 66 Cal. 642; *San Luis Obispo v. White*, 91 Cal. 432.

SEC. 8. Every legislative act of the city and county shall be by ordinance. The enacting clause of every ordinance shall be in these words: "Be it ordained by the People of the City and County of San Francisco as follows." No ordinance shall be passed except by bill, and no bill shall be so amended as to change its original purpose.

As to whether an invalid ordinance can act as a resolution, see *Pollok v. San Diego*, 118 Cal. 593.

SEC. 9. No bill shall become an ordinance, nor resolution be adopted, unless finally passed by a majority of all the members of the board and the vote be taken by ayes and noes and the names of the members voting for and against the same be entered in the journal.

Bill to be passed by majority of members.—We have seen that the general rule is that a majority of the quorum may act. (See note to section 3 of this chapter.) But the charter has made a special rule as to the passage of ordinances and the adoption of resolutions, namely, that they shall be passed by a majority of all the members of the board. Under a like provision of the charter of the City of San Francisco, by which it was provided that no ordinance should be passed "except by a majority of all the members elected to such board," it was held that in order to pass an ordinance it must receive a majority of "the votes of the entire number which the charter provided should be elected," and not simply a majority of the quorum. *San Francisco v. Hazen*, 5 Cal. 169; *Holland v. San Francisco*, 7 Cal. 361; *McCracken v. San Francisco*, 16 Cal. 591; *Grogan v. San Francisco*, 18 Cal. 590; *Pimental v. San Francisco*, 21 Cal. 351; *Satterlee v. San Francisco*, 23 Cal. 314.

This rule is not changed by the fact that one of the members is disqualified. *Satterlee v. San Francisco*, 23 Cal. 314.

Ayes and noes to be entered.—The provision requiring the vote to be taken by ayes and noes, and the names of the mem-

bers voting for and against the bill to be entered in the journal, is mandatory, and a failure to comply with it renders the law void. *Ryan v. Lynch*, 68 Ill. 160; *Spangler v. Jacoby*, 14 Ill. 297; 58 Am. Dec. 571; *People v. Starne*, 35 Ill. 121; 85 Am. Dec. 348; *Schuyler County v. People*, 25 Ill. 163; *Osburn v. Staley*, 5 W. Va. 85; 13 Am. Rep. 640; *Amoskeag Bank v. Ottawa*, 105 U. S. 667; *State v. McBride*, 4 Mo. 303; 29 Am. Dec. 636; *Steckert v. East Saginaw*, 22 Mich. 104; *Lincoln v. Haugan*, 45 Minn. 451; *State v. Buckley*, 54 Ala. 599; *South Ottawa v. Perkins*, 94 U. S. 260.

SEC. 10. No ordinance shall be revised, re-enacted or amended by reference to its title; but the ordinance to be revised or re-enacted, or the section thereof amended, shall be re-enacted at length as revised and amended.

Ordinance not to be amended by reference to title.—

This provision of the charter is mandatory, and a failure to comply with it renders the law invalid. *Ex parte Mabry*, 5 Tex. Ct. App. 93; *Tuskaloosa B. Co. v. Olmstead*, 41 Ala. 9; *Weaver v. Lapsley*, 43 Ala. 224; *Watkins v. Eureka Springs*, 49 Ark. 131; *Walker v. Caldwell*, 4 La. Ann. 297; *Duverge v. Salter*, 5 La. Ann. 94; *State v. Miller*, 100 Mo. 439; *State v. Corner*, 22 Neb. 265; 3 Am. St. Rep. 267; *Portland v. Stock*, 2 Or. 70.

The provision does not apply to amendments by implication. *Hellman v. Shoulters*, 114 Cal. 136; *Pennie v. Reis*, 80 Cal. 266; *University v. Bernard*, 57 Cal. 612; *People v. Mahaney*, 13 Mich. 481; *Anderson v. Com.*, 18 Gratt. 295; *School Directors v. School Directors*, 135 Ill. 464; *State v. Hancock*, 54 N. J. L. 393; *Cooley's Constitutional Limitations*, pp. 180, 181.

Nor does it apply to supplemental acts not in any way altering or modifying the original act. *State v. Hancock*, 54 N. J. L. 393; *Bradley etc. Co. v. Loving*, 54 N. J. L. 227; *Lockhart v. Troy*, 48 Ala. 579.

Nor to statutes merely adding new sections to an existing statute without modifying it. *Edwards v. Denver etc. R. Co.*, 13 Colo. 59; *Boonville v. Trigg*, 46 Mo. 288; *The Borrowdale*,

39 Fed. Rep. 376; *State v. Thurston*, 92 Mo. 325; 1 Am. St. Rep. 720; *State v. Chambers*, 70 Mo. 625; *Morrison v. St. Louis etc. R. Co.*, 96 Mo. 602; *State v. Hendrix*, 98 Mo. 374; *In re White*, 33 Neb. 812.

This provision does not prevent the section amended taking its place by its appropriate number in the original act. *Fletcher v. Prather*, 102 Cal. 413.

If a statute or section of a statute be re-enacted, the re-enactment creates anew the rule of action, and the former stands to all intents as if absolutely and expressly repealed. *Billings v. Harvey*, 6 Cal. 381; *Billings v. Hall*, 7 Cal. 1; *People v. Tisdale*, 57 Cal. 104; *Huffman v. Hall*, 102 Cal. 26.

SEC. 11. An ordinance shall embrace but one subject, which subject shall be expressed in its title. If any subject be embraced in an ordinance and not expressed in its title, such ordinance shall be void only as to so much thereof as is not expressed in its title.

Ordinance to embrace but one subject.—Under the former Constitution, which provided that “Every law enacted by the Legislature shall embrace but one object, which shall be expressed in its title,” it was held that the provision was merely directory, and did not nullify laws passed in violation of it. *Washington v. Page*, 4 Cal. 388; *Ex parte Newman*, 9 Cal. 502; *Pierpont v. Crouch*, 10 Cal. 315; *In re Boston M. & M. Co.*, 51 Cal. 624; *San Francisco v. Spring Valley Water Works*, 54 Cal. 571.

But under the present Constitution, the provisions of which are declared to be “mandatory and prohibitory,” a like provision is held to be mandatory. *Ex parte Liddell*, 93 Cal. 633.

The constitutional provision that acts of the Legislature shall embrace but one subject has no application to municipal ordinances. *Ex parte Haskell*, 112 Cal. 412.

The following statutes have been held to embrace but one subject and to be valid: An act to “create boards of supervisors for the counties of this state, and to define their duties and powers” (*De Witt v. San Francisco*, 2 Cal. 289); an act “to establish a

uniform system of county and township governments," and providing for the classification of counties by population for the purpose of regulating the compensation of the officers and fixing the compensation of the officers as thus classified (*Longan v. Solano*, 65 Cal. 122); an act "to provide a permanent site for the California Home for the Care and Training of Feeble-minded Children, and to erect suitable buildings thereon" (*People v. Dunn*, 80 Cal. 211); an act "to amend an act entitled 'An act to provide for work upon streets, etc., and for construction of sewers in municipalities,' approved March 18, 1885, by adding thereto an additional part numbered 4, consisting of sections 38, 39, 40, 41, 42, 43, and 44, relating to a system of street improvement bonds" (*Hellman v. Shoulters*, 114 Cal. 136).

On the other hand, the following statutes have been held to embrace more than one subject and to be invalid: An act for the control of debris from mining and other operations, the improvement and rectification of river channels, and the erection of embankments or dykes necessary for the protection of lands, towns, or cities, from inundation (*People v. Parks*, 58 Cal. 624); an act "to establish the fees of county, township, and other officers, and of jurors and witnesses in this state," and providing that at the time of filing the inventory and appraisalment in probate and guardianship proceedings, "there shall be an additional deposit of one dollar for each additional thousand dollars" (*Fatjo v. Pfister*, 117 Cal. 83).

Subject to be expressed in title.—The following titles have been held to sufficiently state the subject of the act: An act "to establish a state reform school for juvenile offenders, and to make an appropriation therefor," and providing, among other things, that any boy or girl between the ages of ten and sixteen years, who has been convicted of an offense punishable by imprisonment in the county jail or penitentiary, may be committed to such school (*Ex parte Liddell*, 93 Cal. 633); an act "to encourage and provide for a general vaccination in the State of California," which provides for the vaccination of all children attending the public schools, and for the exclusion of unvaccinated children therefrom (*Abeel v. Clark*, 84 Cal. 226); an act "to

provide for laying out, etc., in whole or in part, any street, etc., and to condemn and acquire any and all lands and property necessary or convenient for that purpose," and providing for the assessment of other lands to pay for lands condemned (*Davies v. Los Angeles*, 86 Cal. 37); an act "to establish a uniform system of county and township governments," and providing for the classification of counties by population for the purpose of regulating the compensation of the officers and fixing the compensation of the officers of the counties as thus classified (*Longan v. Solano*, 65 Cal. 122); an act "to amend an act entitled 'An act to establish a Penal Code,' approved February 14, 1872, by amending section 634, relating to fish and game," and providing for the disposition of fines collected for violations of the act (*People v. Dobbins*, 73 Cal. 257); an act "to amend sections 3607," and other sections, "and to repeal sections 3680, 3887, of an act entitled 'An act to establish a Political Code,' approved March 12, 1872, relating to revenue, and to add two new sections numbered 3664, 3665," and providing for the assessment of railroads (*S. F. & N. P. R. R. Co. v. State Board*, 60 Cal. 12); an act "to create a police relief, health, and life insurance and pension fund in the several counties, cities and towns of the state," and making substantially the same provisions as those contained in art. VIII, ch. X, of this charter (*Pennie v. Reis*, 80 Cal. 266); an act "creating a board of bank commissioners, and prescribing their duties," and prescribing penalties upon bank officers for failure to make reports as required by the act (*People v. Superior Court*, 100 Cal. 105); an act "for the better protection of the stockholders in corporations formed under the laws of the State of California, for the purpose of carrying on and conducting the business of mining," and providing a penalty for failure of the directors to cause to be made or posted an itemized account or balance-sheet (*Francais v. Soms*, 92 Cal. 503); an act "to provide for laying out," etc., any street "in municipalities, and to condemn and acquire any and all land and property, necessary or convenient for that purpose," and which purports to validate former proceedings for the widening of streets (*San Francisco v. Kiernan*, 98 Cal. 614); an act "to provide for police courts in cities having thirty thousand and under one

hundred thousand inhabitants, and to provide for officers thereof" (People v. Henshaw, 76 Cal. 436); an act "to prohibit the sophistication and adulteration of wine, and to prevent fraud in the manufacture and sale thereof," and defining pure wine, prohibiting the use of deleterious substitutes, and fixing penalties for the sale of impure wine (Ex parte Kohler, 74 Cal. 38); an act "to amend an act entitled 'An act to provide for work upon streets,' etc., by adding thereto an additional part . . . relative to a system of street improvement bonds" (Hellman v. Shoulters, 114 Cal. 136); an act "providing for the sale of railroad franchises in municipalities and relative to granting of franchises," and requiring franchises to be awarded to the highest bidder, and embracing the sale of such franchises by counties (Thompson v. Supervisors, 111 Cal. 553); an act "to create the office of commissioner of transportation, and to define its power and duties; to fix the maximum charges for transporting passengers and freights on certain railroads, and to prevent extortion and unjust discrimination thereon," and providing for the collection of fines from every person who shall fraudulently evade or attempt to evade the payment of his fare on any railroad (Gieseke v. San Joaquin, 109 Cal. 489); an act "to create the County of Kings, to define the boundaries thereof, and to provide for its organization and election of officers, and to classify said county," and making provision for the collection of taxes in such county (Kings County v. Johnson, 104 Cal. 198); an act "to establish a uniform system of county and township government" (Orange Co. v. Harris, 97 Cal. 600); an act "to amend section 3481 of the Political Code" (People v. Parvin, 74 Cal. 549); an act "to amend section——" of a named code, "relating to" a particular object (S. F. & N. P. R. R. Co. v. State Board, 60 Cal. 12).

On the other hand, the following titles have been held to insufficiently state the subject of the act: An act "to promote drainage," the objects of which were "The control of debris from mining and other operations; the improvement and rectification of river channels; and the erection of embankments or dykes necessary for the protection of lands, towns, or cities, from inundation" (People v. Parks, 58 Cal. 624); an act "to amend

sections four thousand (4,000)" and other sections, enumerating them, but without reference to any code or statute, "to establish a system of county governments" (Leonard v. January, 56 Cal. 1); an act "to establish the fees of county, township, and other officers, and of jurors and witnesses in this state," and providing that at the time of filing the inventory and appraisalment in probate and guardianship proceedings, "there shall be paid an additional deposit of one dollar for each additional thousand dollars in excess of three thousand dollars" (Fatjo v. Pfister, 117 Cal. 83).

SEC. 12. When a bill is put upon its final passage in the board and fails to pass, and a motion is made to reconsider, the vote upon such motion shall not be acted upon before the expiration of twenty-four hours after adjournment. No bill for the grant of any franchise shall be put upon its final passage within ninety days after its introduction, and no franchise shall be renewed before one year prior to its expiration. Every ordinance shall, after amendment, be laid over for one week before its final passage.

SEC. 13. Every bill or resolution providing for any specific improvement, or the granting of any franchise or privilege, or involving the lease, appropriation or disposition of public property, or the expenditure of public money, except sums less than two hundred dollars, or levying any tax or assessment, and every ordinance providing for the imposition of a new duty or penalty, shall, after its introduction, be published in the official newspaper, with the ayes and noes, for at least five successive days (Sundays and legal holidays excepted) before final action upon the same. If such bill be amended, the bill as amended shall be advertised for a like period before final action thereon. But in cases of great neces-

sity the officers and heads of departments may, with the consent of the Mayor, expend such sums of money, not to exceed two hundred dollars, as shall be necessary to meet the requirements of such necessity.

No order need be made for the publication. *San Luis Obispo v. Hendricks*, 71 Cal. 243.

The whole ordinance, including the enacting clause, must be published. *People v. Russell*, 74 Cal. 578.

As to the time of publication, see *Derby v. Modesto*, 104 Cal. 515.

SEC. 14. If any bill be presented to the Mayor containing several items appropriating money or fixing a tax levy, he may object to one or more items separately, while approving other portions of the bill. In such case he shall append to the bill at the time of signing it a statement of the item or items to which he objects and the reasons therefor, and the item or items so objected to shall not take effect unless passed notwithstanding the Mayor's objection. Each item so objected to shall be separately reconsidered by the board in the same manner as bills which have been disapproved by the Mayor.

SEC. 15. No ordinance shall take effect until ten days after its passage unless otherwise provided in such ordinance.

SEC. 16. Every bill and every resolution as hereinbefore provided, which shall have passed the board and shall have been duly authenticated, shall be presented to the Mayor for his approval. The Mayor shall return such bill or resolution to the board within ten days after receiving it. If he approve it he shall sign it and it shall then become an ordinance. If he disapprove it

he shall specify his objections thereto in writing. If he does not return it with such disapproval within the time above specified, it shall take effect as if he had approved it. The objections of the Mayor shall be entered at large in the journal of the board, and the board shall, after five and within thirty days after such bill or resolution shall have been so returned, reconsider and vote upon the same. If the same shall, upon reconsideration, be again passed by the affirmative vote of not less than fourteen members of the board, the presiding officer shall certify that fact on the bill or resolution, and when so certified, the bill shall become an ordinance with like effect as if it had been approved by the Mayor. If the bill or resolution shall fail to receive the vote of fourteen members of the board it shall be deemed finally lost. The vote on such reconsideration shall be taken by ayes and noes and the names of the members voting for and against the same shall be entered in the journal.

SEC. 17. All ordinances and resolutions shall be deposited with the Clerk of the board who shall record the same at length in a suitable book.

The ordinance need not be recorded before it goes into effect. *People v. Cole*, 70 Cal. 60; *Sacramento v. Dillman*, 102 Cal. 107.

Ordinances, how proved: *San Diego v. Seifert*, 97 Cal. 594; *Merced Co. v. Fleming*, 111 Cal. 46.

SEC. 18. No ordinance shall be repealed except by ordinance adopted in the manner hereinbefore set out, and such ordinance shall be presented to the Mayor for his approval as hereinbefore provided.

SEC. 19. Except as provided in chapter III of article III of this charter, all demands payable out of the treasury must, before they can be approved by the Auditor or paid by the Treasurer, be first approved by the Board of Supervisors. All demands for more than two hundred dollars shall be presented to the Mayor for his approval, in the manner hereinbefore provided for the passage of bills or resolutions. All resolutions directing the payment of money other than salaries or wages, when the amount exceeds five hundred dollars, shall be published for five successive days (Sundays and legal holidays excepted) in the official newspaper.

Claims against the city and county.—Charter, art. III, ch. IV, sec. 1; art II, ch. II, sec. 8; Political Code, sec. 4072.

Injunction will not lie to restrain the board of supervisors from allowing certain claims on the ground that they are not proper or valid. *Merriam v. Supervisors*, 72 Cal. 517.

The supervisors' warrant need not state the fund from which the claim is to be paid. *Babcock v. Goodrich*, 47 Cal. 488.

Nor need it state the items of the account. *Sehorn v. Williams*, 110 Cal. 621.

SEC. 20. Whenever there shall be presented to the Board of Election Commissioners a petition signed by a number of voters equal to fifteen per centum of the votes cast at the last preceding state or city and county election, asking that an ordinance to be set forth in such petition, be submitted to a vote of the electors of the city and county, the Board of Election Commissioners must submit such proposed ordinance to the vote of the electors at the next election.

The signatures to the petition need not be all appended to one paper, but each signer shall add to his sig-

nature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths, that the statements therein made are true, and that each signature to the paper appended is the genuine signature of the person whose name purports to be thereto subscribed.

The tickets used in such election shall contain the words "FOR THE ORDINANCE" (stating the nature of the proposed ordinance) and "AGAINST THE ORDINANCE" (stating the nature of the proposed ordinance).

If a majority of the votes cast upon such ordinance shall be in favor of the adoption thereof, the Board of Election Commissioners shall, within thirty days from the time of such election, proclaim such fact; and upon such proclamation such ordinance shall have the same force and effect as an ordinance passed by the Supervisors and approved by the Mayor, and the same shall not be repealed by the Supervisors. But the Supervisors may submit a proposition for the repeal of such ordinance, or for amendments thereto, for vote at any succeeding election; and should such proposition, so submitted, receive a majority of the votes cast thereon at such election, such ordinance shall be repealed or amended accordingly.

Initiative.—See County Government Act, (Stats. 1897, 452), sec. 13. Considering the novelty and importance of this section, it is very inartificially framed. In the first place the petition is to be signed by a certain number of "voters." Even supposing that this term is equivalent to the word "electors," (which is not clear,) then to what time does the provision relate? Must they be electors at the time the petition is signed or at the time of

the last election? And finally, if at the former time, how is the fact that they are electors to be made to appear?

But aside from this, it is very doubtful whether the provision is valid at all. The Constitution provides that the legislative power of the state shall be vested in the Senate and Assembly. Cal. Con., art. IV, sec. 1. It is further provided that the Legislature by general and uniform laws, shall provide for the election or appointment, in the several counties, of boards of supervisors. Cal. Con., art. XI, sec. 5. Section 7 of article XI, as originally adopted, provided that in consolidated city and county governments "there shall be two boards of supervisors or houses of legislation"; and section 8 of the same article distinguishes the "legislative authority of the city" from "the qualified voters thereof." It certainly follows that the entire legislative power of the state is vested in the State Legislature, with power to delegate certain legislative functions to boards of supervisors in counties, cities, and cities and counties. Furthermore, the charter itself provides that "the legislative power of the City and County of San Francisco shall be vested in a legislative body, which shall be designated the Board of Supervisors." Art. II, ch. I, sec. 1.

The general proposition that the Legislature cannot delegate its functions, except as authorized by the Constitution, is so well settled as hardly to admit of citation of authorities. Moreover, a delegation of legislative authority to the people of the state or a portion of the state is equally as unlawful as a delegation to some board or officer. *Thorne v. Cramer*, 15 Barb. 112; *Bradley v. Baxter*, 15 Barb. 122; *Barto v. Himrod*, 8 N. Y. 483; *People v. Stout*, 23 Barb. 349; *Rice v. Foster*, 4 Harr. 479; *Santo v. State*, 2 Iowa, 165; *Geebrick v. State*, 5 Iowa, 491; *State v. Beneke*, 9 Iowa, 203; *State v. Weir*, 33 Iowa, 134; *People v. Collins*, 3 Mich. 343; *Railroad Co. v. Com'rs*, 1 Ohio, N. S., 77; *Parker v. Com.*, 6 Penn. St. 507; *Maize v. State*, 4 Ind. 342; *Meshmeier v. State*, 11 Ind. 482; *State v. Swisher*, 17 Tex. 441; *State v. Copeland*, 3 R. I. 33; *State v. Wilcox*, 45 Mo. 458; *O'Neil v. Ins. Co.*, 166 Pa. St. 72; 45 Am. St. Rep. 650; *People v. McFadden*, 81 Cal. 489; *State v. Field*, 17 Mo. 529; *Bank of Chenango v. Brown*, 26 N. Y. 467; *Com. v. M'Williams*, 11 Pa. St. 61.

This rule of constitutional law has been forcibly approved by the Supreme Court of this state in the case of *Ex parte Wall*, 48 Cal. 279, where it was said (pp. 313, 314, 322):

“The power to make laws conferred by the Constitution on the Legislature cannot be delegated by the Legislature to the people of the state, or at any portion of the people. (Citing cases.)

“Our government is a representative republic, not a simple democracy. Whenever it shall be transformed into the latter—as we are taught by the examples of history—the tyranny of a changeable majority will soon drive honest men to seek refuge beneath the despotism of a single ruler.

“While the power and responsibility of legislation remain where the Constitution has placed them, a proposed measure, before it can become a law, must pass through the ordeal of a public and deliberate discussion in the Legislature. ‘Public opinion will prevail; but it will be enlightened, deliberate, permanent, and organically expressed public opinion. It is this opinion alone which the Constitution designed should govern. Such a government secures deliberation and responsibility in legislation, and affords protection against the despotism of official rulers on the one hand, and of irresponsible numerical majorities on the other. It has been appropriately termed “the flower of modern civilization.”’

“The power to enact laws must be employed by the State Legislature; that to make by-laws for a town by the local legislature; to become law or by-law, it must first be considered by the appropriate deliberative body. The statute under consideration simply permits a species of *plebiscitum* with reference to a particular subject, in which the only option of the people of a township is to say ‘yes’ or ‘no’ to a complicated project. After this spasmodic effort at the polls, the ‘town government’ (if this can be called one) subsides into inaction, without any form or power of self-vitalization, until again aroused to the exertion of its single function by the supervisors of the county. This statute furnishes neither a system nor a government.”

Moreover, it would seem that the provision for a repeal by the people is open to the same objection. *People v. McFadden*, 81 Cal. 489; *Rice v. Foster*, 4 Harr. (Del.) 479; *Geebrick v. State*, 5 Iowa, 491; *State v. Weir*, 33 Iowa, 134; 11 Am. Rep.

115; *Parker v. Com.*, 6 Pa. St. 507; 47 Am. Dec. 480; *State v. Copeland*, 3 R. I. 33.

While it does not seem as if there could be any doubt as to the unconstitutionality of such a provision as the one under consideration, if contained in an act of the Legislature, such as the County Government Act, it may be contended that a freeholders' charter is not an act of the Legislature and stands on an entirely different footing, and that there is nothing in the Constitution to prevent such a charter from even adopting a government in the form of a pure democracy. While there is some force in this contention, it hardly seems sound. In the first place, according to the latest expression of our Supreme Court, such a charter would seem to be little more than an act of the Legislature—a charter proposed by the people of the municipality, but adopted and made a law by the Legislature. (See Intro., p. 1.) In the second place, both section 7 of article XI of the Constitution, as originally adopted, and section 8 of the same article, seem to contemplate that there shall be boards of supervisors in cities having freeholders' charters. That "the electors of the City of San Francisco" do not "compose an autocracy independent of law and all legislative authority," and that "the city is a corporation of that character, whose powers are exercised through the medium of authorized officers or agents," and that "the inhabitants of the city are not authorized by any law to perform a corporate act in a meeting of its inhabitants *en masse*," seems to be well settled. *People v. Hoge*, 55 Cal. 612, 621, 622, 623.

SEC. 21. Except as otherwise provided in the constitution of the state, or as otherwise provided in this charter, every ordinance involving the granting by the city and county of any franchise for the supply of light or water, or for the lease or sale of any public utility, or for the purchase of land of more than fifty thousand dollars in value, must be submitted to the vote of the electors of the city and county at the election next ensuing after the adoption of such ordinance.

The tickets used at such election shall contain the words "FOR THE ORDINANCE" (stating the nature of the proposed ordinance) and "AGAINST THE ORDINANCE" (stating the nature of the proposed ordinance).

If a majority of the votes cast upon such ordinance shall be in favor of the adoption thereof, the Board of Election Commissioners shall, within thirty days from the time of such election, proclaim such fact; and upon such proclamation such ordinance shall have the same force and effect as an ordinance passed by the Supervisors and approved by the Mayor.

No such franchise, or lease or sale of any public utility, or purchase of land, shall be of any force or effect except it be made by ordinance, and such ordinance be adopted by the people as in this section provided.

Referendum.—Charter, art. XII, secs. 3 and 7; art. IV, ch. I, sec. 3. This section provides for a species of referendum, and is not open to all the objections urged against the preceding section. It is well settled that statutes or ordinances involving certain matters of large public interests may be adopted by the legislative power, to take effect only on condition that they are approved by the electors. Cooley's Constitutional Limitations, pp. 117, *et seq.*: *People v. McFadden*, 81 Cal. 489; *Blanding v. Burr*, 13 Cal. 343; *Hobart v. Butte Co.*, 17 Cal. 24.

The provisions of this section are, therefore, valid, provided the purposes of the ordinances come within the rule allowing certain classes of ordinances to be passed to take effect on condition of their approval by the people. The class of legislation, which may thus be referred to the people, is undoubtedly limited. See *People v. McFadden*, 81 Cal. 489. As to what class of legislation may be thus referred to the people, see 6 Am. and Eng. Ency. of Law, p. 1021.

SEC. 22. Whenever there shall be presented to the Supervisors a petition signed by a number of voters equal to fifteen per centum of the votes cast at the last preceding state or municipal election, asking that an amendment or amendments to this charter, to be set out in such petition, be submitted to the people, the board must submit to the vote of the electors of the city and county the proposed amendment or amendments.

The signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements made therein are true and that each signature to such paper appended is the genuine signature of the person whose name purports to be thereto subscribed.

The Board of Election Commissioners must make all necessary provision for submitting the proposed amendment or amendments to the electors at a special election to be called by it, and shall canvass the vote in the same manner as in other cases of election.

All the provisions of the Constitution of the state embracing the subject in this section provided for are hereby expressly made applicable to such proposed amendment or amendments. But if at any time there shall be no constitutional provision or provisions under which this charter may be amended, then the aforesaid amendment or amendments must be submitted by the Board of Election Commissioners to the vote of the electors of the city and county at the election which next ensues after such petition is filed with the Supervisors, if any

such election is not to be held within sixty days after the filing of such petition.

The tickets used at such election shall contain the words "FOR THE AMENDMENT" (stating the nature of the proposed amendment) and "AGAINST THE AMENDMENT" (stating the nature of the proposed amendment).

If a majority of the votes cast upon such amendment or amendments shall be in favor of the adoption thereof, the Board of Election Commissioners shall, within thirty days from the time of such election, proclaim such fact, and thereupon this charter shall be amended accordingly.

Amendments to charter.—Section 8 of article XI of the Constitution provides the manner in which the charter may be amended: "The charter so ratified may be amended, at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election held at least forty days after the publication of such proposals . . . and ratified by at least three fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter."

This provision of the Constitution is exclusive, and, unless the provision of the charter is in accord with it, the charter provision is void, and an amendment adopted according to it would be invalid. The provision of the charter differs from that of the Constitution in the following particulars:

1. The Constitution contemplates that the amendment shall be originated by the "legislative authority of the city"; whereas the charter provides that such amendment may originate with the people, and that the board of supervisors "must" submit it to a vote of the people, and that upon a favorable vote it shall be adopted without legislative action.

2. The Constitution provides that the amendment may be

approved by the electors at a general or special election; whereas the charter provides that it must be submitted to the electors at a "special" election. (As to the meaning of the term "special election," see *People v. Hoge*, 55 Cal. 612, 617.)

3. The Constitution provides that the amendment must be ratified by at least *three fifths* of the qualified electors; whereas the charter provides that it shall be adopted if a *majority* of the votes are favorable.

Besides these affirmative differences between the Constitution and charter, the latter does not make any provision for approval by the Legislature, nor does it contain the two-year limitation. It therefor results that this method of amending the charter is not in accordance with the Constitution. The section, however, was probably framed so as to take effect in case the Constitution should be amended in this particular. This in turn raises the question, whether a statute or charter void when adopted is made valid by a subsequent change in the Constitution?

The two-year limitation in the Constitution does not apply to amendments or changes of a charter by general laws, but only to amendments made by and at the instance of the officers and electors of the city. *People v. Coronado*, 100 Cal. 571.

As to the meaning of the term "legislative authority of the city," as used in this section of the Constitution, see *People v. Hoge*, 55 Cal. 612.

CHAPTER II.

Powers of the Supervisors.

SECTION 1. Subject to the provisions, limitations and restrictions in this charter contained, the Board of Supervisors shall have power:

1. To ordain, make and enforce within the limits of the city and county all necessary local, police, sanitary and other laws and regulations.

2. Except as otherwise provided in this charter, or in the Constitution of the State of California, to regulate and control for any and every purpose, the use of the streets, highways, public thoroughfares, public places, alleys, and sidewalks of the city and county.

3. To permit the laying down of railroad tracks and running cars thereon, along any street or portion of a street, for the sole purpose of excavating and filling in a street or portion of a street or the adjoining land, for such limited time as may be necessary for such purpose and no longer. Such tracks must be laid level with the street and must be operated under such restrictions as not to interfere with the use of such streets by the public.

4. To empower street railway companies, under such conditions as the board may see fit to impose, to convey street sweepings and offal to the public parks.

5. To fix the limits within which wooden buildings or structures shall not be erected, placed or maintained, and to prohibit the same within such limits. Such limits when once established shall not be changed except by extension.

6. To provide for the abatement or summary removal of any nuisance and to condemn and to prevent the occupancy of unsafe structures.

7. To regulate the use of hackney carriages and public passenger vehicles, and to fix the rates to be charged for the transportation of persons or personal baggage.

8. To provide a public pound and to make all necessary rules and regulations in the matter of animals running at large, and for the custody and destruction of the same.

9. To provide and maintain a morgue.

10. To provide for places for the detention of witnesses and persons charged with insanity, separate and apart from places where criminals or persons accused of public offenses are imprisoned.

11. To establish, maintain and regulate, and change, discontinue and re-establish city and county jails, prisons and houses of detention, punishment, confinement and reformation, hospitals and almshouses.

12. To purchase or acquire by condemnation such property as may be needed for public use.

13. Except as otherwise provided in this charter, to regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic and telegraphic service to the city and county, and to acquire, regulate and control any and all appliances for the sprinkling and cleaning of the streets of the city and county, and for flushing the sewers therein.

14. To fix and determine by ordinance in the month of February of each year, to take effect on the first day of July thereafter, the rates or compensation to be collected by any person, company or corporation in the city and county, for the use of water, heat, light or power, supplied to the city and county, or to the inhabitants thereof, and to prescribe the quality of the service.

15. To impose license taxes and to provide for the collection thereof; but no license taxes shall be imposed upon any person who, at any fixed place of business in the city and county, sells or manufactures goods, wares or merchandise, except such as require permits from the

Board of Police Commissioners as provided in this charter.

16. To prescribe fines, forfeitures and penalties for the breach of any ordinance; but no penalty shall exceed the amount of five hundred dollars or six months' imprisonment, or both.

17. To fix the fees and charges for all official services not otherwise provided for in this charter.

18. To allow not to exceed two thousand five hundred dollars in any year for the celebration of the anniversary of our National Independence, and not to exceed five hundred dollars in any year for the observance of Memorial Day.

19. To appropriate such sums as may be paid into the treasury from fines collected on conviction of persons charged with cruelty to animals, and to authorize the payment of the same or some part thereof to any society that shall efficiently aid in such convictions.

20. To provide for the payment of compensation to the interpreters appointed by the judges of the Superior Court to interpret testimony in criminal cases in said court or the Police Court, or upon inquests and examinations. Such compensation shall not exceed one hundred dollars a month for each interpreter.

21. To offer rewards not exceeding one thousand dollars in any one instance for the apprehension and conviction of any person who may have committed a felony in the city and county, and to authorize the payment thereof.

22. To provide in the annual tax levy for a special fund to be used in the construction of a general system of drainage and sewerage.

23. To provide a seal for the city and county, and seals for the several departments, boards and officers thereof, and a seal for the Police Court.

24. To fix the hours of labor or service required of all laborers in the service of the city and county, and to fix their compensation; provided that eight hours shall be the maximum hours of labor in any calendar day, and that the minimum wages of laborers shall be two dollars a day.

25. To set apart as a boulevard or boulevards any street or streets, or portions of a street or streets, over which there is no existing franchise for any street railroad.

26. To construct or permit the construction of tunnels, under such rules and regulations as the board may prescribe.

27. To regulate street railroads, tracks and cars; to compel the owners of two or more of such roads using the same street for any distance not exceeding ten blocks to use the same tracks and to equitably divide the cost of construction and expense of maintenance thereof between the owners; to fix, establish and reduce the fares and charges for transporting passengers and goods thereon; to regulate rates of speed, and to pass ordinances to protect the public from danger or inconvenience in the operation of such roads.

28. To allow any transcontinental or other railroad company having not less than fifty miles of road actually constructed and in operation to enter the city and county with its road and run its cars to the water front at the most suitable point for public convenience. No exclusive right shall be granted to any railroad com-

pany; and the use of all such rights shall at all times be subject to regulation by the Supervisors.

Every ordinance granting such right shall be upon the conditions that said company shall pave and keep in repair the street from curb to curb in such a manner and with such material as may from time to time be prescribed by the Supervisors, and that such company shall allow any other railroad company to use in common with it the same track or tracks, each paying an equal portion for the construction and repair of the tracks and appurtenances used by such railways jointly.

29. To convey lands in accordance with the provisions of the act of the Legislature of the State of California, entitled "An act to expedite the settlement of land titles in the City and County of San Francisco, and to ratify and confirm the acts and proceedings of certain of the authorities thereof," approved March 14, 1870.

30. To provide for the execution of all trusts confided to the city and county.

31. To transfer from one department of the city government vacant and unused lots of land to another department.

32. To provide for the lease of any lands now or hereafter owned by the city and county; but all leases shall be made at public auction to the highest responsible bidder at the highest monthly rent, after publication of notice thereof for at least three weeks. No lease shall be authorized except by ordinance passed by the affirmative vote of two thirds of the members of the board, and approved by the Mayor, and no lease shall be made for a longer period than twenty years.

33. To provide for the sale at public auction, after advertising for five days, of personal property unfit or unnecessary for the use of the city and county.

34. To provide for the purchase of property levied upon or under execution in favor of the city and county; but the amount bid on such purchase shall not exceed the amount of judgment and costs.

35. The Supervisors must appropriate annually to the Mayor thirty-six hundred dollars as and for a contingent fund, for which he need furnish no vouchers.

Powers of Supervisors—*In general*.—The board of supervisors is a special tribunal with mixed powers—administrative, legislative, and judicial. *Waugh v. Chauncey*, 13 Cal. 11; *Fall v. Paine*, 23 Cal. 303.

When exercising judicial functions, its action cannot be collaterally attacked, but only upon *certiorari*. *Waugh v. Chauncey*, 13 Cal. 11; *Fall v. Paine*, 23 Cal. 303; *Robinson v. Supervisors*, 16 Cal. 208; *Murray v. Supervisors*, 23 Cal. 493; *Bixler v. Sacramento*, 59 Cal. 698; *People v. Supervisors*, 10 Cal. 344; *Lent v. Tillson*, 72 Cal. 404, 434.

They have only such powers as are conferred upon them by their charters, the statutes and Constitution of the state. *Robinson v. Supervisors*, 16 Cal. 208; *Ex parte Roach*, 104 Cal. 272; *Vernon Irr. Co. v. Los Angeles*, 106 Cal. 237; *Modoc v. Spencer*, 103 Cal. 498.

They are bodies with a limited jurisdiction, and their jurisdiction must appear in the record of their proceedings. *Finch v. Supervisors*, 29 Cal. 453.

They can exercise the following powers and no others:

1. Those granted in express words;
2. Those necessarily or fairly implied in or incident to the powers expressly granted;
3. Those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. *Von Schmidt v. Widber*, 105 Cal. 151.

As to the authority of the supervisors to rescind their action,

see: Hall v. Los Angeles, 74 Cal. 502; McConoughey v. Jackson, 101 Cal. 265; C. P. R. R. Co. v. Placer, 46 Cal. 668.

As to the liability of supervisors for negligence, see: Political Code, sec. 4086; Santa Cruz R. R. Co. v. Santa Clara, 62 Cal. 180.

Ordinances passed under the implied power of the municipality must be reasonable and consonant with the general powers and purposes of the corporation. Ex parte Green, 94 Cal. 387; Ex parte Chin Yan, 60 Cal. 78; Matter of Ah You, 88 Cal. 99; Ex parte Miller, 89 Cal. 41; Ex parte Whitwell, 98 Cal. 73; Ex parte Sing Lee, 96 Cal. 354; Ex parte Hodges, 87 Cal. 162; Merced Co. v. Fleming, 111 Cal. 46.

A municipal ordinance must consist with the general powers and purposes of the corporation, must harmonize with the general laws of the state, the municipal charter, and the principles of the common law. South Pasadena v. Terminal Ry. Co., 109 Cal. 315; Ex parte Frank, 52 Cal. 606, 609; 18 Am. Rep. 642; Ex parte Kearny, 55 Cal. 212.

As to conflict between county and city ordinances, see: Ex parte Roach, 104 Cal. 272; Ex parte Mansfield, 106 Cal. 400.

Subdivision 1.—Local, police, and sanitary laws.—This provision of the charter is taken from section 11 of article XI of the Constitution, which provides that "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws." The term "other regulations" is limited to objects similar to those denominated police and sanitary. Ex parte Hodges, 87 Cal. 162.

Ordinances passed under this provision must not be in conflict with general laws of the state. Matter of Sic, 73 Cal. 142; Ex parte Hong Shen, 98 Cal. 681; San Luis Obispo v. Graves, 84 Cal. 71; Matter of Guerrero, 69 Cal. 88; Ex parte Green, 94 Cal. 387; Ex parte Christensen, 85 Cal. 208; Ex parte Taylor, 87 Cal. 91; Ex parte Solomon, 91 Cal. 440; Ex parte Campbell, 74 Cal. 20; Ex parte Stuart, 61 Cal. 374; Ex parte Keeney, 84 Cal. 304; Ex parte Boswell, 86 Cal. 232; Ex parte Lacey, 108 Cal. 326; Ex parte Roach, 104 Cal. 272; Ex parte Stephen, 114 Cal. 278.

This provision does not authorize the passage of any ordinance which shall have any force outside of the limits of the municipality. *South Pasadena v. Terminal Ry. Co.*, 109 Cal. 315.

The following ordinances have been held to be valid as "local, police, and sanitary" laws: Prescribing the manner in which buildings used as laundries shall be constructed and where they shall be located (*Ex parte White*, 67 Cal. 102; *Matter of Yick Wo*, 68 Cal. 294; *Ex parte Moynier*, 65 Cal. 33; *Matter of Hang Kie*, 69 Cal. 149); prohibiting the sale of opium except in certain cases (*Ex parte Hong Shen*, 98 Cal. 681); prohibiting the maintenance within the city limits of any tippling-house, dram-shop, or bar-room (*Ex parte Campbell*, 74 Cal. 20); prohibiting the sale of spirituous liquors without a license (*In re Stuart*, 61 Cal. 374); fixing a higher license for carrying on a saloon where females are employed than where they are not (*Ex parte Felehlín*, 96 Cal. 360); providing that no license shall be issued to persons engaged in the sale of liquors in dance-cellars, etc., or where females attend as waitresses (*Ex parte Hayes*, 98 Cal. 555; *Foster v. Police Com'rs*, 102 Cal. 483); prohibiting the maintenance of slaughter-houses within certain limits (*Ex parte Shrader*, 33 Cal. 279; *Ex parte Heilbron*, 65 Cal. 609); prohibiting the keeping of more than two cows within certain portions of the city (*Matter of Linehan*, 72 Cal. 114); prohibiting the feeding of cows on still slops, and vending milk of cows so fed (*Johnson v. Simonton*, 43 Cal. 242); preventing cattle and hogs from running at large over the public streets (*Amyx v. Taber*, 23 Cal. 370); prohibiting the selling of pools on horse-races, except within the enclosure of a race-track (*Ex parte Tuttle*, 91 Cal. 589); making it unlawful to visit places of gambling (*Ex parte Lane*, 76 Cal. 587; *Ex parte Chin Yan*, 60 Cal. 78); prohibiting any person, for the purpose of prostitution, from visiting any building kept for the purpose of prostitution (*Ex parte Johnson*, 73 Cal. 228); prohibiting profane language (*Ex parte Delaney*, 43 Cal. 478); forbidding the dumping of rubbish, except in a place designated by the superintendent of streets (*Ex parte Casinello*, 62 Cal. 538; see also *Ex parte Taylor*, 87 Cal. 91); making it unlawful to "play or make a noise upon any musical instrument in any drinking saloon" after twelve o'clock

midnight, or for any female to be in any public drinking-house after that hour (*Ex parte Smith & Keating*, 38 Cal. 702); prohibiting the establishment or conducting of any carpet-beating machine within certain limits (*Ex parte Lacey*, 108 Cal. 326; *Ex parte Cheney*, 90 Cal. 617); granting to a certain person the exclusive privilege, for twenty years, of having and removing all dead animals not slain for food (*Alpers v. San Francisco*, 32 Fed. 503; *National Fertilizer Co. v. Lambert*, 48 Fed. 458); providing for a bounty on coyote scalps (*Ingram v. Colgan*, 106 Cal. 113); prohibiting the beating of drums in the traveled streets of a city without permission of the president of the board of trustees (*Matter of Flaherty*, 105 Cal. 558); imposing a higher tax upon saloons outside of incorporated cities and towns than upon those within such municipalities (*Ex parte Stephen*, 114 Cal. 278).

On the other hand, the following ordinances have been held not to be valid police regulations: Prohibiting the employment of females in dance-cellars, etc. (*Ex parte Maguire*, 57 Cal. 604); prohibiting the employment of any one to work more than eight hours a day, and the employment of Chinese labor (*Ex parte Kuback*, 85 Cal. 274); prohibiting the carrying on of a public laundry within the corporate limits of a town, except in certain blocks, without a written permit from the board of trustees, and the consent of a majority of the real-property owners within a certain district (*Ex parte Sing Lee*, 96 Cal. 354); providing that all insane asylums shall be constructed of either brick, iron, or stone, and surrounded by a brick or stone wall, that they shall not be within four hundred yards of any dwelling or school, that only one class of persons shall be treated in the same building, and that male and female patients shall not be cared for in the same building (*Ex parte Whitwell*, 98 Cal. 73); requiring all occupants of lands, within ninety days, to exterminate and destroy the ground-squirrels on their respective lands (*Ex parte Hodges*, 87 Cal. 162); providing for the purchase of a smallpox hospital (*Von Schmidt v. Widber*, 105 Cal. 151); declaring it unlawful for any person to have in his possession any lottery-ticket, unless it is shown that such possession is innocent (*Matter of Wong Hane*, 108 Cal. 680).

Subdivision 2.—Streets.—Cal. Con., art. IV, sec. 25, subdiv. 7; art. XI, sec. 19; Charter, art. VI.

As to the authority of the city to grant franchises to railroad companies to carry freight upon public streets, see *Montgomery v. Railway Co.*, 104 Cal. 186.

As to the power of disposition of the public streets, see: *South Pasadena v. Terminal Ry. Co.*, 109 Cal. 315, 322; *San Francisco v. Spring Valley Water Works*, 48 Cal. 493, 529.

As to the right of the city to litigate the title to public streets, see *People v. Holladay*, 93 Cal. 241.

Subdivision 3.—Railways on streets.—Cons. Act, (Stats. 1856, 145), sec. 74, subdiv. 24; Civil Code, secs. 497-511. See note to subdivision 2 of this section.

Subdivision 4.—Street sweepings.—The city has authority to grant to a street railway company the right to carry freight over the public streets. *Montgomery v. Railway Co.*, 104 Cal. 186.

Subdivision 5.—Fire limits.—Cons. Act, (Stats. 1856, 145), sec. 74, subdiv. 9; *Ex parte Fiske*, 72 Cal. 125; *McCloskey v. Kreling*, 76 Cal. 511.

Subdivision 6.—Nuisances.—Cons. Act, (Stats. 1856, 145), sec. 74, subdiv. 10; Act of April 25, 1863, (Stats. 1863, 540), sec. 1, subdiv. 2; Charter, art. X, sec. 3.

Section 370 of the Penal Code and section 3479 of the Civil Code declare the obstruction of any public street, etc., a public nuisance; and section 372 of the Penal Code provides that one who maintains a public nuisance is guilty of a misdemeanor. These provisions are exclusive, and a city ordinance making the same provisions would be invalid. Nevertheless, the city may make provision for the summary removal of such nuisances and punish one for failure to remove the same. *Ex parte Taylor*, 87 Cal. 91.

A house on fire, or likely to become on fire, is a public nuisance, which it is lawful to abate. *Surocco v. Geary*, 3 Cal. 69; *Dunbar v. Alcalde etc. of San Francisco*, 1 Cal. 355.

Under a like provision of the Consolidation Act, it was held that the city might enter into the so-called "Dead Animal Contract," granting to a certain person the exclusive privilege, for

twenty years, of having and removing all dead animals not slain for food. *Alpers v. San Francisco*, 32 Fed. 503; *National Fertilizer Co. v. Lambert*, 48 Fed. 458.

The city has power to remove shade-trees which have been growing on the sidewalks of a public street. *Vanderhurst v. Tholeke*, 113 Cal. 147.

Subdivision 7.—Hacks, etc.—Cons. Act, (Stats. 1856, 145), sec. 74, subdiv. 13.

Subdivision 8.—Pound.—Act of April 25, 1863, (Stats. 1863, 540), sec. 1, subdiv. 2; Act of April 23, 1858, (Stats. 1858, 235), sec. 1, subdiv. 14; Act of April 4, 1864, (Stats. 1863-4, 502), sec. 1, subdiv. 5.

Animals running at large: *Amyx v. Taber*, 23 Cal. 370; *Spect v. Arnold*, 52 Cal. 455; *Thompson v. Copstein*, 52 Cal. 653.

Subdivision 9.—Morgue.—Act of March 5, 1885, (Stats. 1885, 25); Charter, art. IV, ch. VI, sec. 1.

Subdivision 10.—Witnesses.—Cal. Con., art. I, sec. 6.

Subdivision 11.—Prisons, etc.—Cons. Act, (Stats. 1856, p. 145), sec. 74, subdiv. 16; Act of April 1, 1872, (Stats. 1871-2, 878); Act of March 31, 1876, (Stats. 1875-6, 632); Act of March 9, 1885, (Stats. 1885, 34); Act of Feb. 23, 1893, (Stats. 1893, 5); Act of April 1, 1878, (Stats. 1877-8, 953).

As to hospitals, see Act of Feb. 16, 1897, (Stats. 1897, 9).

As to the erection of jails, see *Ertle v. Leary*, 114 Cal. 238.

Subdivision 12.—Purchase of property.—Charter, art. I, sec. 1. It was held under the Consolidation Act that the city and county did not have unlimited power to purchase property; and that the board of supervisors had no authority to purchase real estate as a site for a smallpox hospital. *Von Schmidt v. Widber*, 105 Cal. 151.

Subdivision 13.—Public utilities.—Act of April 26, 1862, (Stats. 1862, 466), sec. 1, subdiv. 9; Act of April 4, 1863, (Stats. 1863, 168), sec. 1, subdiv. 6; Charter, arts. VI and XII.

Subdivision 14.—Water rates.—Cal. Con., art. XIV; Act of March 7, 1881, (Stats. 1881, 54). As to this constitutional provision and the provisions of the act of 1881, the Supreme

Court, in *Fitch v. Supervisors*, XVI Cal. Dec. 129, laid down the following rules:

1. An ordinance fixing the rates passed subsequent to February is as valid as if it were passed in February, and the rates fixed by such ordinance may be collected from the consumer.

2. The failure of the board to fix the rates is an offense against the entire state, and not against any individual, and the Legislature has no power to authorize a prosecution for such offense at the instance of an individual.

3. After the rates have been fixed, although not fixed in the month of February, a consumer and ratepayer is not an "interested party" within the meaning of section 8 of such act.

As to the fixing of water rates in general, see the following cases: *San Francisco Pioneer Woolen Factory v. Brickwedel*, 60 Cal. 166; *People v. Stephens*, 62 Cal. 209; *S. V. W. W. v. Bryant*, 52 Cal. 132; *San Francisco v. S. V. W. W.*, 53 Cal. 608; *Jacobs v. Supervisors*, 100 Cal. 121; *S. V. W. W. v. San Francisco*, 82 Cal. 286; *S. V. W. W. v. Supervisors*, 61 Cal. 3; *Sheward v. Citizens' W. Co.*, 90 Cal. 635; *San Diego Water Co. v. San Diego*, 59 Cal. 517; *Higgins v. San Diego Water Co.*, 118 Cal. 524; *Redlands etc. Water Co. v. Redlands*, 121 Cal. 365.

As to the authority of the city to regulate telephone and telegraph rates, see: *Am. Law Rev.*, vol. XXX, No. 3, p. 381, (May-June, 1896); section 7 of this chapter.

Subdivision 15.—Licenses.—Act of March 30, 1872, (Stats. 1871-2, 736); Charter, art. VIII, ch. III, sec. 1, subdiv. 3. This provision of the charter abolishes all mercantile licenses for carrying on business at any fixed place, except licenses upon the sale of liquor.

As to municipal licenses in general, see: *People v. Ferguson*, 65 Cal. 288; *O'Brien v. Colusa*, 67 Cal. 503; *In re Guerrero*, 69 Cal. 88; *In re Lawrence*, 69 Cal. 608; *Amador Co. v. Kennedy*, 70 Cal. 458; *Ex parte Thomas*, 71 Cal. 204; *Maxwell v. San Luis Obispo*, 71 Cal. 466; *San Luis Obispo v. Hendricks*, 71 Cal. 242; *Sullivan v. Royer*, 72 Cal. 248; *Monterey v. Abbott*, 77 Cal. 541; *San Luis Obispo v. Graves*, 84 Cal. 71; *Mendocino Co. v. Bank of Mendocino*, 86 Cal. 255; *Merced Co. v. Fleming*, 111

Cal. 46; Ex parte Benninger, 64 Cal. 291; Lassen Co. v. Cone, 72 Cal. 387; Ex parte Mirande, 73 Cal. 365; San Francisco v. Ins. Co., 74 Cal. 113; San Benito v. S. P. R. Co., 77 Cal. 518; Ex parte Mason, 102 Cal. 171; Ex parte Roach, 104 Cal. 272; Ex parte Mansfield, 106 Cal. 400; Ex parte Stephen, 114 Cal. 278; Ventura Co. v. Clay, 112 Cal. 65; Ex parte Haskell, 112 Cal. 412; Inyo Co. v. Erro, 119 Cal. 119; San Luis Obispo v. Greenberg, 120 Cal. 300; San Luis Obispo v. Jack, 120 Cal. 307.

Subdivision 16.—Fines.—Cons. Act, (Stats. 1856, 145), sec. 74, subdiv. 11.

Subdivision 17.—Fees.—Cons. Act, (Stats. 1856, 145), sec. 74, subdiv. 18.

Subdivision 18.—Celebrations.—Act of April 4, 1863, (Stats. 1863, 168), sec. 1, subdiv. 4.

Unless expressly authorized by statute, a municipal corporation has no authority to arrange a celebration at the public expense. *Hodges v. Buffalo*, 2 Den. (N. Y.) 110; *Hood v. Lynn*, 1 Allen (Mass.), 103; *Gerry v. Stoneham*, 1 Allen (Mass.), 319; *Tash v. Adams*, 10 Cush. (Mass.) 252.

Subdivision 20.—Interpreters.—Act of April 4, 1864, (Stats. 1863-4, 502), sec. 1, subdiv. 28; Charter, art. V, ch. 1, sec. 1; Code of Civil Procedure, sec. 1884; Act of March 12, 1885, (Stats. 1885, 108).

It is not believed that the charter can fix the compensation of interpreters in the superior courts; but it would seem that the city has that power as to police courts under section 8½ of article XI of the Constitution.

Subdivision 21.—Rewards.—Political Code, sec. 380, subdiv. 8; Penal Code, sec. 1547. This provision does not authorize the payment of a reward to a peace officer. *Lees v. Colgan*, 120 Cal. 262.

The cases are conflicting as to the power of a municipal corporation, in the absence of an express statutory provision to offer rewards for the apprehension of criminals. See: *Loveland v. Detroit*, 41 Mich. 367; *Gale v. South Berwick*, 51 Me. 174; *Hanger v. Des Moines*, 52 Iowa, 193; *Hawk v. Marion Co.*, 48 Iowa, 472; *Patton v. Stephens*, 14 Bush (Ky.), 324; *Murphy v.*

Jacksonville, 18 Fla. 318; Grant Co. Com. v. Bradford, 72 Ind. 455; Borough of York v. Forscht, 23 Pa. St. 391; County of Crawford v. Spenny, 21 Ill. 288; Crawshaw v. Roxbury, 7 Gray (Mass.), 374; Pool v. Boston, 5 Cush. (Mass.) 219; Janvrin v. Exeter, 48 N. H. 83.

Subdivision 22.—Drainage and Sewerage.—Charter, art. VI, ch. IV.

Subdivision 23.—Seals.—Act of April 23, 1858, (Stats. 1858, 235), sec. 1, subdiv. 20; Charter, art. I, sec. 1.

Subdivision 24.—Hours of labor.—Political Code, secs. 3244-3250; Charter, art. II, ch. III, sec. 1.

Subdivision 27.—Railway rates.—Cal. Con., art. XII, sec. 22; Civil Code, sec. 501; Act of January 1, 1878, (Stats. 1877-8, 18); South Pasadena v. Terminal Ry. Co., 109 Cal. 315.

There is a question as to whether or not the fixing of street-railway rates is a "municipal affair" within the meaning of that expression as used in section 6 of article XI of the Constitution. (See Intro., p. 19.) If not, the provisions of the Civil Code as to the rates would be superior to those of the charter.

It has been held by one of the departments of the superior court of the City and County of San Francisco that the Board of Railroad Commissioners has no power to fix the rates of street railroads. Board of Railroad Commissioners v. Market Street Ry. Co., (decided October 13, 1898), San Francisco Law Journal, November 9, 1898.

Subdivision 30.—Trusts.—Charter, art. I, sec. 1.

Subdivision 32.—Leases.—Cons. Act, (Stats. 1856, 145), sec. 74, subdiv. 2.

Subdivision 33.—Sale of personal property.—Cons. Act, (Stats. 1856, 145), sec. 74, subdiv. 2; Political Code, sec. 4046; County Government Act of 1897, (Stats. 1897, 452), sec. 9; Hall v. Los Angeles, 74 Cal. 502; McGowan v. Ford, 107 Cal. 178; Ertle v. Leary, 114 Cal. 238.

Subdivision 35.—Contingent fund.—Act of April 27, 1860, (Stats. 1860, 272), sec. 9.

SEC. 2. The Supervisors shall constitute the Board of Equalization of the city and county. The Clerk of the Supervisors shall be clerk of the Board of Equalization by virtue of his office.

Cons. Act, (Stats. 1856, 145), sec. 72; Political Code, secs. 3672, *et seq.*; Cal. Con., art. XIII, sec. 9.

As to the State Board of Equalization, see: Savings and Loan Soc. v. Austin, 46 Cal. 415; Houghton v. Austin, 47 Cal. 646.

SEC. 3. The Board of Supervisors shall appoint from its members a committee consisting of three to be denominated Finance Committee, and shall fill all vacancies in the committee. The committee shall investigate the transactions and accounts of all officers having the collection, custody or disbursement of public money, or having the power to approve, allow, or audit demands on the treasury; shall have free access to any records, books and papers in all public offices; shall have power to administer oaths and affirmations, and to examine witnesses, and compel their attendance before them by subpoena. The committee may at any time visit any of the public offices and make its examinations and investigations therein without hindrance.

The committee must, at least once in every six months, examine the official bonds of all city and county officers, and investigate the sufficiency and solvency of the sureties thereon, and report in writing the facts to the Mayor. Such report shall specify each bond with the sureties, and the amounts for which each surety is bound, and state whether or not they are sufficient and solvent. Upon such report the Mayor shall take such action as shall be necessary to protect the city and county, and may require new bonds when necessary,

and he may suspend any officer till a sufficient bond is filed and approved.

Under a like provision of the County Government Act, it was held that the board of supervisors might employ an expert to examine the books and accounts of county officers. *Harris v. Gibbins*, 114 Cal. 418.

SEC. 4. The Finance Committee shall have power, and it shall be its duty, to examine the records and examine and expert the books of account of all persons, companies or corporations that are required to pay a portion of their gross receipts into the treasury; and shall likewise, as an aid to the fixing of rates for furnishing water and light to the city and county and to the inhabitants thereof, have like power; and it shall be its duty, to examine the records and examine and expert the books of account of any and all persons, companies or corporations so furnishing water or light.

In the exercise of its functions, the concurrence of two members of the committee shall be deemed sufficient. The committee shall keep a record of its proceedings with the names of the witnesses examined and a substantial statement of the evidence taken. If, from the examination made by the committee, it shall appear that a misdemeanor in office, or a defalcation, has been committed by an officer, the committee shall immediately report to the Mayor, who if he approve the report, shall take such proceedings against such officer as are authorized by law, and may suspend him pending such proceedings. Any police officer shall execute the process and orders of the committee.

Cons. Act, (Stats. 1856, 145), sec. 65; Act of April 10, 1857, (Stats. 1857, 190).

SEC. 5. No exclusive franchise or privilege shall be granted for laying pipes, wires or conduits.

Cal. Con., art. I, sec. 21; art. XI, sec. 19.

SEC. 6. The Board of Supervisors shall have power to grant authority for a term not exceeding twenty-five years to construct and operate street railways upon, or over, or under, the streets or parts of streets of the city and county not reserved for boulevards or carriage driveways, upon the following conditions and in the following manner and none other:

Upon application being made to the board for any such franchise, it shall by resolution determine whether such franchise or any part thereof should be granted, and at said time shall determine on what conditions the same shall be granted additional to those conditions provided in this chapter. After such determination, it shall cause notice of such application and resolution to be advertised in the official newspaper of the city and county for ten consecutive days. Such advertisement must be completed not less than twenty nor more than thirty days before any further action is taken by the board on such application. The advertisement must state the character of the franchise sought, the term of its proposed continuance, and the route to be traversed; that sealed bids will be received up to a certain hour on a day to be named in the advertisement; and a further statement that no bids will be received of a stated amount, but that all bids must be for the payment to the city and county in lawful money of the United States of a stated percentage of the gross annual receipts of the person, company or corporation to whom the franchise may be

awarded, arising from its use, operation, enjoyment or possession.

Every bidder shall file with his bid a bond executed to the city and county, with at least two good and sufficient sureties to be approved by the Mayor in a penal sum prescribed by the Supervisors, and set forth in such advertisement, conditioned that such bidder will well and truly observe, fulfil and perform each and all of the conditions, terms and obligations of the franchise for which said application was made in case the same shall be awarded to him, and that in case of the breach of any of the conditions of such bond, the whole amount of the penal sum therein named shall be taken to be liquidated damages, and that as such shall be recoverable from the principal and sureties on such bond.

At the next regular session after the expiration of the time stated in such advertisement up to which such bids will be received, the board must open such bids and award the franchise to the person, company or corporation offering to pay the highest stated percentage of the gross receipts arising from the use, operation, possession or enjoyment of the franchise for which such application was made. But no award shall be made, nor any such application granted, unless the stated percentage offered to be paid for the franchise shall be at least three per centum of such gross receipts during the first five years of the period for which the franchise is to be granted, four per centum of the gross receipts during the next succeeding ten years, and five per centum of the gross receipts during the next succeeding ten years.

Except as in this section otherwise provided, bidding for such franchises must be in accordance with the pro-

visions of this charter in relation to bids made to the Board of Public Works, so far as such provisions may be applicable. The Supervisors may reject any and all bids, and may refuse to grant a franchise for any part of the route for which application was made. Every ordinance making such grant shall require the concurrence of three fourths of all the members of the Board of Supervisors, as shown by the ayes and noes, and the approval of the Mayor, and at least ninety days shall intervene between the introduction and final passage of any such ordinance. It shall require a vote of five sixths of all the Supervisors to pass the ordinance notwithstanding the objections of the Mayor.

If any bid be accepted, the franchise must be granted upon the express condition, in addition to the conditions required by this charter, and such other conditions as may be prescribed by the Supervisors, that the per centum of the gross receipts of the railway shall be paid into the treasury on or before the tenth day of the next ensuing month after such gross receipts shall have been earned; and upon the further condition that the whole of the railway shall be continuously operated, and that at the end of the term the road-track and bed of such railway and all its stationary fixtures upon the public streets, shall become the property of the city and county; and that the grantees will, within one hundred days after the date of such grant, commence the construction of such railway, and continuously thereafter, in each and every month until the completion thereof, expend in such construction at least the sum of three thousand dollars.

The failure to comply with any of said conditions

shall work an immediate forfeiture of such franchise and the road or track constructed thereunder. There shall be no power in the Supervisors to relieve from such forfeiture or from any of said conditions. On or before the tenth day of each month after said receipts shall have been earned, the president and secretary of said railway company shall make and file with the Clerk of the Board of Supervisors a sworn statement of the gross receipts of such railway for the preceding month.

In granting any such franchise the Board of Supervisors shall impose such other lawful conditions as it may deem advisable, and must expressly provide that the franchise shall not be renewed or regranted, and that the board shall at all times have the power to regulate the rates of fare to be charged by those using, operating, possessing or enjoying the franchise, and that the Finance Committee of the board shall at all times be permitted to examine and expert their books as to such gross receipts. All moneys received for such franchises and in payment of the said per centum shall be credited to the General Fund.

Franchises.—Civil Code, secs. 497, *et seq.*; Act of March 13, 1897, (Stats. 1897, 135); Act of February 25, 1891, (Stats. 1891, 12); Act of February 24, 1893, (Stats. 1893, 29); Act of March 23, 1893, (Stats. 1893, 208); *Thompson v. Alameda Co.*, 111 Cal. 553; *People v. Craycroft*, 111 Cal. 544; *Montgomery v. Railway Co.*, 104 Cal. 186; *South Pasadena v. Terminal Ry. Co.*, 109 Cal. 315.

Ordinance to be submitted to the vote of the people, see note to sections 20 and 21 of chapter I of this article.

As to the power of the city to annex additional conditions to the franchise, see: *South Pasadena v. Terminal Ry. Co.*, 109 Cal. 315; *Atlanta v. Gate City etc. Co.*, 11 Ga. 106.

In granting a franchise the board of supervisors does not exercise judicial, but legislative, functions. *People v. Supervisors*, XVI Cal. Dec. 159.

SEC. 7. The Supervisors shall have no power to grant franchises or privileges to erect poles or wires for transmitting electric power or for lighting purposes along or upon any public street or highway of the city and county except upon all the conditions and in the manner, including competitive bidding and payment of a percentage of gross receipts, hereinbefore set out, and upon the further condition that the board shall at all times have the right to regulate the charges of any person, company or corporation using, enjoying or possessing such franchise or privilege.

When, on the expiration of any street railroad franchise, it shall be deemed inexpedient by the board to use any of the property reverting to it by reason of such expiration in the operation of a street railroad, then the board shall have power to lease such property to any person, company or corporation after the notice, on the terms, and in the manner above provided as to the granting of street railroad franchises, as far as the same may be applicable. But no ordinance authorizing such lease shall be passed prior to ninety days next preceding the expiration of such franchise.

Any ordinance granting a franchise or authorizing a lease under the provisions of this section shall be in force from and after the expiration of thirty days from the date of its signature by the Mayor, or from and after the expiration of thirty days from the date of its passage by the Supervisors over his objections, unless within said thirty days a petition signed by a number of

the electors of the city and county equal to fifteen per centum of the votes cast at the last preceding election shall have been filed with the Supervisors, asking that said ordinance be submitted to the vote of the people. In such case said ordinance shall be submitted at the next election to the vote of the electors of the city and county, and unless said ordinance shall at said election receive in its favor a majority of the votes cast thereon it shall have no force or effect for any purpose. If a majority of the votes be in favor of such ordinance, the Board of Election Commissioners shall, on the conclusion of the canvass of the vote thereon, proclaim such fact, and upon such proclamation said ordinance shall have full force and effect as of the date aforesaid. Said petition and submission shall be made in accordance with the provisions of section twenty of chapter I of this article.

Light, power, etc.—Section 19 of article XI of the Constitution provides:

“In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this state, shall, under the direction of the superintendent of streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gas-light or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof.”

This provision of the Constitution is held to be self-executing. *Ewing v. Oroville M. Co.*, 56 Cal. 649; *Spring Valley Water Works v. San Francisco*, 61 Cal. 3; *People v. Stephens*, 62 Cal. 209.

An ordinance requiring a company to obtain a permit from the superintendent of streets before erecting poles in the streets is valid; and the fact that the permit is improperly refused is no ground for an injunction to prevent the superintendent of streets from interfering with the erection of the poles, the proper remedy being mandamus to compel the granting of the permit. *Mutual Electric L. Co. v. Ashworth*, 118 Cal. 1.

The effect of the provisions of this section of the charter is that no one shall hereafter be permitted to use the public streets for the purposes stated, except under the conditions stated in section six of this chapter, including competitive bidding and payment of a percentage of gross receipts to the city and such additional conditions as the board shall make upon each application for such franchise. It is believed that this provision of the charter is in conflict with the constitutional provision quoted above. The only conditions imposed upon the applicant by this section of the Constitution are that he shall exercise the privilege "under the directions of the superintendent of streets . . . and under such *general* regulations as the municipality may prescribe for damages and indemnity for damages"; and that the municipality "shall have the right to regulate the charges thereof." These provisions do not authorize the city to compel the applicant for such privileges to enter into competitive bidding with some one who may not intend to ever make use of the franchise when he obtains it; nor does it authorize the city to compel him to pay an exorbitant percentage into the city's treasury for the privilege, when companies already in the field are not required to make any such payment.

As to the provision requiring the ordinance to be submitted to a vote of the people, see note to sections 20-21 of chapter I of this article.

As to competitive bidding, see sec. 6 of this chapter.

As to exclusive franchises, see sec. 5 of this chapter.

As to street railway franchises, see sec. 6 of this chapter.

As to the authority of the city to regulate telegraph and telephone rates, see *Am. Law Rev.*, vol. XXX, No. 3, p. 381, (May-June, 1896).

SEC. 8. All claims for damages against the city and county must be presented to the Board of Supervisors and filed with the Clerk within six months after the occurrence from which the damages are claimed to have arisen; otherwise there shall be no recovery on any such claim.

Claims against city and county.—Charter, art. II, ch. I, sec. 19; art. III, ch. IV, sec. 1; Political Code, sec. 4072.

Prior to the adoption of the charter there was no statute requiring claims for damages against the City and County of San Francisco to be presented to the Board of Supervisors. *Lehn v. San Francisco*, 66 Cal. 76; *Bloom v. San Francisco*, 64 Cal. 503; *Spangler v. San Francisco*, 84 Cal. 12.

The provision does not apply to causes of action which accrued before the adoption of the charter. *Powers v. City of St. Paul*, 36 Minn. 87.

Provisions requiring claims against municipalities to be presented are valid. *May v. Jackson Co.*, 35 Fed. 710; *Maxwell v. Fulton Co.*, 119 Ind. 20; *People v. San Francisco*, 11 Cal. 206.

The complaint must allege presentation. *Reining v. Buffalo*, 102 N. Y. 308; *Thompson v. Milwaukee*, 69 Wis. 492; *Ames v. San Francisco*, 76 Cal. 325; *Yolo Co. v. Sacramento*, 36 Cal. 193; *Youngsville v. Siggins*, 110 Pa. St. 291.

An allegation that the claim was "duly presented" is insufficient. *Rhoda v. Alameda Co.*, 52 Cal. 350; *Janin v. Browne*, 59 Cal. 37, 42.

A claim for damages caused by the change of the grade of a street must be presented. *Bancroft v. San Diego*, 120 Cal. 432.

The action is upon the claim, and recovery can only be had upon and in accordance with it. *McGrath v. Carroll*, 110 Cal. 79, 83; *Lichtdenberg v. McGlynn*, 105 Cal. 45.

The claim must state sufficient facts to determine the amount due. *Christie v. Sonoma Co.*, 60 Cal. 164.

Items may be given by reference to statement attached to the claim. *Babcock v. Goodrich*, 47 Cal. 488.

The claim must be verified. *McCormick v. Tuolumne Co.*, 37 Cal. 257.

It must be presented within the time specified. *Carroll v. Siebenthaler*, 37 Cal. 193; *Wright v. Merrimaek*, 52 Wis. 466.

Actions for "damages" only are included in this provision. It includes actions in tort as well as actions for damages for breach of contract. *Yolo Co. v. Sacramento*, 36 Cal. 193; *McCann v. Sierra Co.*, 7 Cal. 121.

The provision of the County Government Act requiring the claim to be itemized, "giving names, dates, and particular services rendered," is directed to the board of supervisors alone, and not to the auditor. *Sehorn v. Williams*, 110 Cal. 621.

CHAPTER III.

Contracts.

SECTION 1. All contracts for goods, merchandise, stores, supplies, subsistence or printing for the city and county, as well as for all subsistence, supplies, drugs, and other necessary articles for hospitals, prisons, public institutions and other departments not otherwise specifically provided for in this charter, must be made by the Supervisors with the lowest bidder offering adequate security, after publication for not less than ten days in the official newspaper; and no purchase thereof or liability therefor shall be made or created except by contract.

Except as otherwise provided in this charter, the board must determine annually what goods, merchandise, stores, supplies, drugs, subsistence and other necessary articles will be needed by the city and county for

the ensuing year, and it shall have no power to purchase or to pay for the same unless the provisions in this charter provided as to competitive bidding for supplies are strictly followed, and no contract shall be made for any of the same unless upon such competitive bidding.

All proposals shall be accompanied with a certificate of deposit or certified check on a solvent bank in the city and county of ten per centum on the amount of the bid, payable at sight to the order of the Clerk of the Supervisors. If the bidder to whom the contract is awarded shall for five days after such award fail or neglect to enter into the contract and file the required bond, the Clerk shall draw the money due on such certificate of deposit or check and pay the same into the treasury; and under no circumstances shall the certificate of deposit or check or the proceeds thereof be returned to such defaulting bidder.

Notices for proposals for furnishing the aforesaid articles shall mention said articles in general and shall state that the conditions and schedule may be found in the office of the Clerk of the Board of Supervisors; and shall also state that such articles are to be delivered at such times, in such quantities, and in such manner, as the Supervisors may designate. Any bidder may bid separately for any article named. The award as to each article shall in all cases be made to the lowest bidder for such article, and where a bid embraces more than one article, the Supervisors shall have the right to accept or reject such bid or the bid for any one or more articles embraced therein. In the case of contracts for subsistence of prisoners the advertisement for proposals shall specify each article required, the quality thereof, the

quantity for each person, and the existing and probable number of persons to be supplied. No article or articles provided for in this section shall have been made in any prison. The Supervisors shall require bonds with sufficient sureties for the faithful performance of every contract. The clerk of the Supervisors shall furnish printed blanks for all such proposals, contracts and bonds.

All bids shall be sealed and delivered by the bidder to the clerk of the Supervisors, and opened by the board at an hour and place to be stated in the advertisement for proposals, in the presence of all bidders who attend, and the bidders may inspect the bids. All bids with alterations or erasures therein shall be rejected. All articles so supplied shall be subject to inspection and rejection by the Supervisors and by the person in charge of the office, institution or department for which the same are supplied. Every contract for work to be performed for the city and county must provide that in the performance of the contract eight hours shall be the maximum hours of labor on any calendar day, and that the minimum wages of laborers employed by the contractor in the execution of his contract shall be two dollars a day. Any contract for work to be performed for the city and county which does not comply with the provisions of this section shall be null and void, and any officer who shall sign the same shall be deemed guilty of misfeasance and upon proof of such misfeasance shall be removed from office.

Contracts.—Where a charter prescribes the mode in which municipal contracts shall be entered into, no contract will bind the corporation unless made in that mode. *Zottman v. San Francisco*, 20 Cal. 96; *McCoy v. Briant*, 53 Cal. 247; *Los An-*

geles Gas Co. v. Toberman, 61 Cal. 199; San Francisco Gas Co. v. San Francisco, 9 Cal. 453; Grogan v. San Francisco, 18 Cal. 590; Wallace v. San Jose, 29 Cal. 180; Linden v. Case, 46 Cal. 171; Carroll v. Siebenthaler, 37 Cal. 193.

When a contract is not in its origin obligatory upon the corporation, by reason of not having been made in the mode prescribed by the charter, it can not be ratified in disregard of that mode by any subsequent action of the corporate authorities. *Zottman v. San Francisco*, 20 Cal. 96. But see: *Argenti v. San Francisco*, 16 Cal. 255; *Lucas v. San Francisco*, 7 Cal. 463; *McCracken v. San Francisco*, 16 Cal. 591.

It has also been held that the corporation will not be liable in such a case upon an implied contract. *Zottman v. San Francisco*, 20 Cal. 96. But see: *Brown v. Board of Education of Pomona*, 103 Cal. 531; *San Francisco Gas Co. v. San Francisco*, 9 Cal. 453; *Argenti v. San Francisco*, 16 Cal. 255; *San Francisco Gas Light Co. v. Dunn*, 62 Cal. 580.

Hours of labor.—Under the provisions of the Act of February 21, 1868, (Stats. 1867-8, 63), which provided that “Eight hours’ labor shall constitute a day’s work in all cases where the same is performed . . . by the authority of any . . . municipal government within this state, or of any officer thereof acting as such, and a stipulation to that effect shall be made a part of all contracts to which . . . any . . . municipal government shall be a party,” it was held that the only stipulation that is to be made in the contract is that “eight hours’ labor shall constitute a legal day’s work,” and does not authorize a stipulation that the contractor shall not “require or permit any person so employed to work more than eight hours per day; and in case of violation of this covenant, said party of the second part shall be released from all the obligations herein contained, and the parties of the first part shall not be entitled to any pay for work done.” *Drew v. Smith*, 38 Cal. 325.

Under the same act it was held that a contract is not void because it does not provide that eight hours shall be a day’s work under it. *Babcock v. Goodrich*, 47 Cal. 488. It would seem, however, that this would be the effect of the omission under the charter.

As to the validity of laws limiting the hours of labor in general, see: *Ex parte Kuback*, 85 Cal. 274; *Drew v. Smith*, 38 Cal. 325; *Holden v. Hardy*, 18 Sup. Ct. Rep. 383; 14 Utah, 71; 46 Pac. Rep. 756; *Am. Law. Rev.*, vol. 32, p. 321.

As to sufficiency of accusation against officer for failure to insert eight-hour clause in contract, see *In re Stow*, 98 Cal. 587.

As to minimum rate of compensation, see Act of March 9, 1897, (Stats. 1897, 90).

Officers not to be interested in contracts, see: Political Code, sec. 920; Act of May 1, 1851, (Stats. 1851, 522); Penal Code, sec. 71; Charter, art. XVI, sec. 6; *McConoughey v. Jackson*, 101 Cal. 265; *Rice v. Haywards*, 107 Cal. 398.

As to contracts for printing, see Cons. Act, (Stats. 1856, 145), sec. 69. A contract for printing without ten days' notice that such contract will be let to the lowest bidder is void. *Maxwell v. Supervisors*, 53 Cal. 389.

As to competitive bidding, see *Ertle v. Leary*, 114 Cal. 238.

SEC. 2. All contracts for official advertising shall be let annually in like manner by the Supervisors to the lowest responsible bidder publishing a daily newspaper in the city and county which has a bona fide daily circulation of at least eight thousand copies, and has been in existence at the time of letting such contract for at least two years. In inviting proposals therefor, such advertising shall not be classified and no proposal shall be acted upon which offers to do such advertising at different rates for different portions thereof.

Such advertising shall be construed to mean the advertising and publication of all official reports, orders, ordinances, messages, resolutions, notices inviting proposals and all notices of every nature relating to city work. No part or kind of such advertising shall be charged or contracted for at a higher rate than any other part or kind of the same is charged or contracted for, except in the case of the delinquent tax list.

The newspaper to which the award of such advertising is made shall be known and designated as the "official newspaper."

The advertising of the delinquent tax list shall be let to the lowest responsible bidder on a separate bidding from all other official advertising.

No board, department or officer shall make any publication which is not expressly authorized by this charter or by the Supervisors.

SEC. 3. The Clerk of the Supervisors shall annually, under the direction of the Supervisors, advertise for proposals for supplying the various departments, officers and offices of the city and county with all stationery and supplies in the nature of stationery, assessment-books, minute-books, blank books and the printing of blanks. The contracts for stationery shall be separate from those for printing.

Notice for proposals for supplies shall require a greater or less quantity to be delivered at such times and in such manner as the Supervisors may designate. The advertisement for bids for paper shall state the weight, quality and size of the various kinds required, and that for printing shall enumerate the various letter-heads, tax bills, tax receipts, court notices, and all blanks, papers and documents now used or hereafter required in any and all departments of the city and county, including the forms, papers and blanks now used or hereafter required by the courts of the city and county.

The forms for all printing shall be consecutively numbered, and each form and blank shall be known as No.— (specifying the number). Such advertisement

shall be published for at least ten days, and shall require the bidders to state the price at which each article will be furnished, printed or manufactured, as the same may be required from time to time during such period, and the amount of the bond that will be required as security for the performance of the contract.

No stationery furnished to any officer or department shall contain the name or names of the officer or officers constituting the head of the department or board. The contract or contracts must be made with the lowest bidder offering adequate security, quantity and quality being considered. The Clerk of the Supervisors shall have rooms in the City Hall for the custody of such stationery, and when purchased the same shall be delivered to him, and he shall issue and distribute the same to the various departments as required.

He shall keep accounts in detail, charging himself with all goods received, and crediting himself with the goods delivered upon order or requisition as hereinafter provided. When any of such supplies are required for any department, the Clerk of the Supervisors shall issue the same after the requisition for such articles has been made by the head of such department and approved by the Mayor.

All requisitions for printing shall be made in a similar manner. The Clerk shall report monthly in writing to the Supervisors in detail, the amount of all paper, blanks, books, stationery and printing ordered by and delivered to any department or officer.

SEC. 4. Any officer of the city and county, or of any department thereof, who shall aid or assist a bidder in

securing a contract to furnish labor, material or supplies, at a higher price or rate than that proposed by any other bidder, or who shall favor one bidder over another, by giving or withholding information, or who shall wilfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to that called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kinds of material or supplies than has been actually received, shall be deemed guilty of misfeasance and shall be removed from office.

SEC. 5. All contracts provided for in this chapter must be in writing and executed in the name of the city and county by the Mayor. All such contracts must be countersigned by the Clerk of the Supervisors, and registered by number and date in a book kept by him for that purpose. When a contractor fails to enter into the contract awarded to him or to perform the same, new bids must be invited, and a contract awarded as provided herein in the first instance. When the Supervisors believe that the prices bid are too high, or that bidders have combined to prevent competition, or that the public interest will be subserved thereby, they may reject any and all bids and cause the notice for proposals to be re-advertised.

The provision requiring the contract to be in writing is valid, and must be observed or the contract will be void. *Frick v. Los Angeles*, 115 Cal. 512; *Los Angeles Gas Co. v. Toberman*, 61 Cal. 199.

SEC. 6. No contract for lighting streets, public buildings, places or offices, shall be made for a longer period than one year, nor shall any contract to pay for gas, electric light or any illuminating material at a higher rate than the minimum price charged to any other consumer, be valid. Demands for lighting public buildings shall be presented monthly to the board or department using or having charge thereof, and shall specify the amount of gas, electric light or illuminating material consumed in such building during the month.

Contracts for lighting.—Act of March 26, 1895, (Stats. 1895, 191); Act of March 27, 1897, (Stats. 1897, 210); Act of April 4, 1870, (Stats. 1869-70, 815); Santa Rosa Lighting Co. v. Woodward, 119 Cal. 30.

ARTICLE III.

FINANCE AND TAXATION.

CHAPTER I.

Levying of Taxes.

SECTION 1. On or before the first Monday of April in each year the heads of departments, offices, boards and commissions of the city and county shall send to the Supervisors an estimate in writing of the amount of expenditure, specifying in detail the objects thereof, required in their respective departments, offices, boards and commissions, including a statement of the salaries of their subordinates. Duplicates of these estimates shall be sent at the same time to the Auditor.

Levying of taxes.—Political Code, secs. 3607-3900; Cons. Act, (Stats. 1856, 145), sec. 71; Act of March 18, 1874, (Stats. 1873-4, 477); Act of May 17, 1861, (Stats. 1861, 419); Act of May 18, 1853, (Stats. 1853, 233); Act of March 30, 1872, (Stats. 1871-2, 773).

The general revenue system provided in the Political Code applies to the City and County of San Francisco. *People v. Reis*, 76 Cal. 269; *Savings and Loan Soc. v. Austin*, 46 Cal. 415; *Mitchell v. Crosby*, 46 Cal. 97.

Under section 9 of article XIII of the Constitution, the taxpayer is entitled to notice of the meetings of the county board at which taxes may be increased, and a statute which does not give him this right is unconstitutional. *People v. Pittsburg R. R. Co.*, 67 Cal. 625.

A freeholders' charter may provide for taxation for municipal purposes. *Security Savings etc. Co. v. Hinton*, 97 Cal. 214; *Farmers' etc. Bank v. Board of Equalization*, 97 Cal. 318.

The Legislature has no authority to impose taxes for local pur-

poses within the territory of cities. *San Francisco v. Liverpool etc. Ins. Co.*, 74 Cal. 113.

SEC. 2. On or before the first Monday of May in each year the Auditor shall transmit to the Supervisors an estimate of the probable expenditures of the city and county government for the next ensuing fiscal year, stating the amount required to meet the interest and sinking funds for all outstanding funded debts, and the wants of all the departments of the municipal government in detail, and showing specifically the amount necessary to be apportioned to each fund in the treasury; also an estimate of the amount of income from fines, licenses and other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by taxation.

SEC. 3. The Supervisors shall meet annually between the first Monday of May and the first Monday of June, and by vote of a majority of all the members thereof make a budget of the amounts estimated to be required to pay the expenses of conducting the public business of the city and county for the next ensuing fiscal year. The budget shall be prepared in such detail as to the aggregate sum and the items thereof allowed to each department, office, board or commission, as the Supervisors shall deem advisable.

Before finally determining upon the budget, the Supervisors shall fix such sufficient time or times as may be necessary to allow the taxpayers to be heard in regard thereto, and the Supervisors shall attend at the time or times so appointed for such hearing.

SEC. 4. Any item in said budget may, within ten days, be vetoed in whole or in part by the Mayor, and it shall require fifteen votes of the Supervisors to overcome such veto. Action thereon must be taken before the last Monday of June.

After the final estimate is made in accordance herewith, it shall be signed by the Mayor and the Clerk of the Supervisors, and the several sums shall then be appropriated for the ensuing fiscal year to the several purposes and departments therein named. The estimate shall be filed in the office of the Auditor.

SEC. 5. The Supervisors must cause to be raised annually according to law, and collected by tax, the amounts so appropriated, less the amounts received from fines, licenses and other sources of revenue.

SEC. 6. Except as otherwise provided in this charter, no money shall be drawn from the treasury unless in consequence of appropriations made by the Supervisors and upon warrants duly drawn thereon by the Auditor.

SEC. 7. No warrant shall be drawn except upon an unexhausted specific appropriation.

SEC. 8. The Supervisors may appropriate thirty-six thousand dollars a year for urgent necessities not otherwise provided for by law. No money shall be paid out of this appropriation unless authorized by a five-sixths vote of all the members of the Board of Supervisors and approved by the Mayor.

SEC. 9. It shall not be lawful for the Supervisors, or for any board, department, officer or authority having power to incur, authorize or contract liabilities against

the treasury, to incur, authorize, allow, contract for, pay or render payable in the present or future, in any one month, any expenditure, demand or demands, against any appropriation, which, taken with all other expenditures, indebtedness or liability made or incurred up to the time in such month of making or incurring the same, shall exceed one twelfth part of the amount of the appropriation for the fiscal year.

When any board, department or officer having power to incur liabilities against the treasury shall make any agreement for obtaining supplies or having labor performed, such department, officer or board shall register such agreement by number and date, and all demands arising under such agreement shall be payable in the order of such registration. Such department, board or officer must inform the person with whom it is proposed to make such agreement of the amount of money available or likely to be available in the fund from which such demands are payable.

If, at the beginning of any month, any money remains unexpended in any appropriation which might lawfully have been expended during the preceding month, such unexpended sum or sums, except so much thereof as may be required to pay all unpaid claims upon such appropriation, may be carried forward and expended in any succeeding month of such fiscal year; but not afterwards, except in payment of claims lawfully incurred during such fiscal year. Appropriations provided to meet the expense of elections; for the support and maintenance of the Assessor's and Tax Collector's departments; and for urgent necessities, shall be exempt from the provisions of this section.

One-twelfth Act.—Act of February 25, 1878, (Stats. 1877-8, 111); *Weaver v. San Francisco*, 111 Cal. 319; *Hunt v. Broderick*, 104 Cal. 313.

This provision has no application to salaries of officers whose appointment is provided for, and salaries fixed, by law. *Cashin v. Dunn*, 58 Cal. 581; *Welch v. Strother*, 74 Cal. 413.

Constitutional limitations.—Besides the limitations contained in this chapter upon the authority of the municipality to incur liability by contract, the Constitution (art. XI, sec. 18) provides:

“No county, city, town, township, board of education, or school district shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year, without the assent of two thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof on or before maturity, which shall not exceed forty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.”

The effect of this provision is that an indebtedness created in one fiscal year cannot be paid out of the revenue of the next or any following year. *McGowan v. Ford*, 107 Cal. 177; *San Francisco Gas Co. v. Brickwedel*, 62 Cal. 641; *Smith v. Broderick*, 107 Cal. 644; *Shaw v. Statler*, 74 Cal. 258; *Schwartz v. Wilson*, 75 Cal. 502; *Mayrhofer v. Board of Education*, 89 Cal. 110; 23 Am. St. Rep. 451; *Sutro v. Pettit*, 74 Cal. 332; *McBean v. San Bernardino*, 96 Cal. 183; *Von Schmidt v. Widber*, 105 Cal. 151; *Weaver v. San Francisco*, 111 Cal. 319; *Bradford v. San Francisco*, 112 Cal. 537; *Lewis v. Widber*, 99 Cal. 412; *Montague v. English*, 119 Cal. 225.

A contract to pay annually a specified sum for a sewer farm for the period of five years is not within this provision of the Constitution. *McBean v. Fresno*, 112 Cal. 159; *Smilie v. Fresno Co.*, 112 Cal. 311.

The provisions of the Political Code for the issuance of bonds

for the funding of the indebtedness of cities are not within this provision of the Constitution. *Los Angeles v. Teed*, 112 Cal. 319.

So a contract for work to be paid for in installments as the work progresses is not within the prohibition of the Constitution. *Smilie v. Fresno Co.*, 112 Cal. 311; *Higgins v. San Diego Water Co.*, 118 Cal. 524.

The provision does not apply to the salaries of public officers. *Lewis v. Widber*, 99 Cal. 412.

If at the time the indebtedness is incurred there are sufficient funds in the treasury to pay it, the contract is not invalidated by reason of the subsequent failure of such funds. *Montague v. English*, 119 Cal. 225.

An action will lie to enjoin the supervisors, auditor, and treasurer from incurring and paying any indebtedness in contravention of this provision of the Constitution. *Bradford v. San Francisco*, 112 Cal. 537.

"Two thirds of such electors."—This provision of the Constitution only requires the assent of two thirds of such electors as vote on the proposition, and not of all the electors who vote at the election at which the proposition is voted upon. *Howland v. Supervisors*, 109 Cal. 152.

"Provision for tax."—This does not require that at the time of incurring the indebtedness a sinking fund or interest tax shall be levied, but only that *provision* shall be made for the collection of the tax. *Howland v. Supervisors*, 109 Cal. 152.

As to the election to authorize the incurring of the indebtedness, see *Los Angeles v. Teed*, 112 Cal. 319.

SEC. 10. No contracts made, the expense of whose execution is not provided by law or ordinance to be paid by assessments upon the property benefited, shall be binding or of any force, unless the Auditor shall indorse thereon his certificate that there remains unexpended and unapplied as herein provided, a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as cer-

tified by the board or officer making the same. This provision shall not apply to work done, or supplies furnished, involving the expenditure of less than two hundred and fifty dollars, unless the same is required by law to be done by contract at public letting. The Auditor shall make such indorsement upon every such contract so presented to him, if there remains unapplied and unexpended such amount so specified by the officer making the contract, and thereafter shall hold and retain such sum to pay the expense incurred until the contract shall be fully performed. The Auditor shall furnish weekly to the head of each department a statement of the unexpended balances of the appropriation for his department.

Auditor's certificate.—A provision of a charter that all ordinances or resolutions appropriating money or incurring any liability against the treasury, before being passed, shall have a certificate of the auditor in writing thereon to the effect that such appropriation can be made or indebtedness incurred without violation of any provision of the charter, is constitutional. *Higgins v. San Diego Water Co.*, 118 Cal. 524; *Pollok v. San Diego*, 118 Cal. 593.

The provision of the County Government Act to the effect that all claims against the county presented by members of the board of supervisors must, before allowance, be presented to the district attorney, who must indorse thereon his opinion as to the validity thereof, is valid. *Solano Co. v. McCudden*, 120 Cal. 648.

SEC. 11. On or before the last Monday of June in each year the Supervisors shall levy the amount of taxes for city and county purposes required to be levied upon all property not exempt from taxation. The amount shall be sufficient to provide for the payment during the fiscal year of all demands upon the treasury authorized

to be paid out of the same; but such levy, exclusive of the state tax and the tax to pay the interest and maintain the sinking funds of the bonded indebtedness of the city and county, and exclusive of the tax to pay for the maintenance and improvement of the parks, squares and public grounds of the city and county, shall not exceed the rate of one dollar on each one hundred dollars' valuation of the property assessed. The Supervisors in making the levy shall apportion the taxes to the several funds.

Tax levy.—See note to section 1 of this chapter.

Prior to the adoption of the charter it was not necessary that the mayor should sign the tax levy. *Truman v. Supervisors*, 110 Cal. 128; *Morton v. Broderick*, 118 Cal. 474.

The assessor need not compute the assessment-book until the first Monday in July (Political Code, sec. 3652), and the board of supervisors may increase or lower the entire assessment any time before the third Monday in July (Political Code, sec. 3672). The charter provides that the tax levy shall be made on or before the last Monday in June. How can this be done?

SEC. 12. In making the apportionment, the Supervisors shall take into account and apportion to the several funds the income and revenue estimated to arise during the fiscal year from licenses, fees and other sources; but the income to pay the interest on the bonded indebtedness and provide for the sinking funds shall always be provided for out of the tax on property.

SEC. 13. The limitation in section eleven of this chapter upon the rate of taxation shall not apply in case of any great necessity or emergency. In such case the limitation may be temporarily suspended so as to enable the Supervisors to provide for such necessity or emer-

gency. No increase shall be made in the rate of taxation authorized to be levied in any fiscal year, unless such increase be authorized by ordinance passed by the unanimous vote of the Supervisors and approved by the Mayor. The character of such necessity or emergency shall be recited in the ordinance authorizing such action, and be entered in the journal of the board.

Nothing in this section shall authorize the incurring of liabilities against the treasury not allowed by law, or which cannot be paid out of the income and revenue provided, collected and paid into the proper fund as its proportion of the same for such fiscal year, or permit liabilities or indebtedness incurred in any one fiscal year to be a charge upon or paid out of the income or revenue of any other fiscal year.

SEC. 14. The Supervisors shall fix the amount of municipal revenues and provide for the collection thereof. They shall from time to time provide for the payment of the interest and principal of the bonds for which the city and county is liable.

SEC. 15. The Supervisors shall authorize the disbursement of all public moneys, except as otherwise specifically provided in this charter.

SEC. 16. At the close of each fiscal year, if all demands against each fund have been paid or satisfied, and all disputed or contested demands finally adjudicated, the Supervisors shall direct the Treasurer to transfer all surplus moneys to a fund to be called the Surplus Fund, except such surplus moneys as are in the several interest and sinking funds, in the Common

School Fund, in the Park Fund, the Library Fund, the Police Relief and Pension Fund, in the Firemen's Relief and Pension Fund, and in such other funds the disposition of whose surplus moneys is in this charter otherwise provided for.

See chapter II of this article; *Belby v. McKenzie*, 112 Cal. 143; *Modoc v. Madden*, 120 Cal. 555.

CHAPTER II.

The Several Funds.

SECTION 1. The income and revenue paid into the treasury shall be at once apportioned to and kept in separate funds. It shall not be lawful to transfer money from one fund to another or to use the same in payment of demands upon another fund. The provisions of this section shall not apply to fees paid into the treasury and placed temporarily to the credit of the Unapportioned Fee Fund under the provisions of chapter III of this article.

Unapportioned Fee Fund: Charter, art. III, ch. III, secs. 4, 10, 11, 12.

As to the transfer from one fund to another, see: Charter, art. III, ch. I, sec. 16; *Potter v. Fowzer*, 78 Cal. 493.

SEC. 2. The several funds in the treasury authorized by law at the time this charter takes effect, or provided for by this charter, shall continue therein so long as there shall be occasion therefor; and the moneys therein, or which may belong thereto, shall not be used for any purpose other than that for which the same were raised except as otherwise provided in this charter.

The General Fund shall consist of moneys received into the treasury and not specially appropriated to any other fund.

The Park Fund shall consist of the moneys annually apportioned to said fund by virtue of the tax provided for in this charter for the maintenance, preservation and improvement of the parks, squares, avenues and public grounds of the city and county; of all moneys accruing from rents of buildings under the jurisdiction of the Park Commissioners; and of all moneys coming into the hands of said Commissioners whether from donations or otherwise. Out of said fund shall be paid all the expenses of every kind for the preservation, maintenance and improvement of the parks, squares, avenues and public grounds of the city and county.

The Library Fund shall consist of the moneys annually apportioned to said fund by virtue of the tax provided for in this charter for the maintenance of library and reading rooms, and the purchase of books therefor. Out of said fund shall be paid all the expenses necessary to the maintenance of such library and reading rooms and the purchase of books therefor.

Funds in treasury when charter takes effect: Charter, art. XVI, sec. 37.

General Fund: Cons. Act, (Stats. 1856, 145), secs. 71, 76, 95.

Park Fund: Charter, art. XIV, sec. 11.

Library Fund: Act of April 26, 1880, (Stats. 1880, 231; *Ban. ed.*, 524); Charter, art. VII, ch. VII.

SEC. 3. The Surplus Fund shall consist of the moneys remaining at the end of any fiscal year in any other funds (except the Common School Fund and the

other funds by this charter otherwise expressly provided for) after all valid demands, indebtedness and liabilities against said funds incurred within such fiscal year have been paid and discharged; provided, that all disputed or contested claims payable out of such funds have been finally adjudicated.

The Surplus Fund shall be used for the purposes and in the order following:

1. In payment of any final judgment against the city and county.

2. In liquidation and extinguishment, under such regulations as the Supervisors may adopt, of any outstanding funded debt of the city and county.

3. To be carried over and apportioned among the funds and used in the ensuing fiscal year as part of the income and revenue thereof.

Surplus Fund: Cons. Act, (Stats. 1856, 145), sec. 95.

Moneys in Common School, Park, Library, Firemen's, Police, and Public Building Funds do not go into the Surplus Fund, but are carried forward. Charter, section 5 of this chapter.

Common School Fund: Cons. Act, (Stats. 1856, 145), secs. 71, 76, 95; Act of April 1, 1872, (Stats. 1871-2, 846), sec 4; Political Code, sec. 3861: Charter, art. VII, ch. V, sec. 2; Act of March 30, 1868, (Stats. 1867-8, 558).

SEC. 4. The Special Deposit Fund shall consist of:

1. All moneys paid into court and deposited with the Treasurer by the County Clerk.

2. All moneys received by the Public Administrator and deposited by him with the Treasurer.

3. All moneys deposited with the Treasurer on special deposit.

The moneys in the Special Deposit Fund shall be paid out in the manner prescribed by law.

Special Deposit Fund: Cons. Act, (Stats. 1856, 145), sec. 76.

Moneys deposited by county clerk: County Government Act, (Stats. 1897, 452), secs. 216-218; Charter, ch. III of this article.

Moneys deposited by public administrator: Code of Civil Procedure, sec. 1737.

In case of escheated estates: Code of Civil Procedure, secs. 1269-1272.

SEC. 5. Except as otherwise provided in this charter any moneys remaining at the end of any fiscal year in any interest and sinking fund or a fund provided by a special bond issue for a specific purpose, the Common School Fund, the Park Fund, the Library Fund, the Firemen's Relief and Pension Fund, Police Relief and Pension Fund, and the Public Building Fund shall be carried forward and apportioned to said respective funds for the ensuing fiscal year.

Common School Fund: see sec. 3 of this chapter.

Park Fund: see sec. 2 of this chapter.

Library Fund: see sec. 2 of this chapter.

Firemen's Relief and Pension Fund: Charter, art. IX, ch. VII; Act of March 11, 1889, (Stats. 1889, 108); Act of March 26, 1895, (Stats. 1895, 107); Act of March 3, 1885, (Stats. 1885, 13).

Police Relief and Pension Fund: Charter, art. VIII, ch. X; Act of March 4, 1889, (Stats. 1889, 56).

SEC. 6. Any demand against the treasury or against any fund thereof remaining unpaid at the end of the fiscal year for lack of money applicable to its payment, may be paid out of any money which may subsequently come into the proper fund from delinquent taxes or

other uncollected income or revenue for such year. Such demands shall be paid out of such delinquent revenue, when collected, in the order of their registration.

SEC. 7. When there shall be to the credit of any sinking fund in the treasury a sum not less than twenty thousand dollars which may be applied to the redemption of any outstanding bonds to which such fund is applicable, which are not redeemable before their maturity, it shall be the duty of the Mayor, Auditor and Treasurer to advertise for thirty days, inviting proposals for the surrender and redemption of the bonds.

After such advertisement the money in such sinking fund, or such portion thereof as may be required therefor, shall be awarded to the person or persons offering to surrender said bonds for the lowest price. Upon such award, when duly audited, the Treasurer shall, upon the surrender of the bonds, pay the amount to the person or persons to whom the same was awarded. No bid for the surrender of any of the bonds shall be accepted, which shall require a greater sum of money for their redemption than the then worth of the principal and interest of the bonds, calculated with interest, not exceeding four per centum per annum.

proposed by the Mayor

CHAPTER III.

The Custody of Public Moneys.

SECTION 1. All moneys arising from taxes, licenses, fees, fines, penalties and forfeitures, and all moneys which may be collected or received by any officer of the

city and county or any department thereof, in his official capacity, for the performance of any official duty, and all moneys accruing to the city and county from any source, and all moneys directed by law or this charter to be paid or deposited in the treasury, shall be paid into the treasury. All officers or persons collecting or receiving such moneys must pay the same into the treasury. No officer or person other than the Treasurer shall pay out or disburse such moneys, or any part thereof, upon any allowance, claim or demand.

Taxes: Cons. Act, (Stats. 1856, 145), secs. 78-79.

Fees: see sec. 3 of this chapter.

SEC. 2. Salaried officers shall not receive nor accept any fee, payment, or compensation directly or indirectly, for any services performed by them in their official capacity, nor any fee, payment, or compensation, for any official service performed by any of their deputies, clerks, or employees, whether performed during or after official business hours. No deputy, clerk, or employee of such officers shall receive or accept any fee, compensation or payment, other than his salary as now or hereafter fixed by law, for any work or service performed by him of any official nature, or under color of office, whether performed during or after official business hours.

SEC. 3. Every fee, commission, percentage, allowance, or other compensation authorized by law to be charged, received, or collected by any officer for any official service, must be paid by the officer receiving the same to the Treasurer in the manner herein provided.

Fees.—Act of February 9, 1866, (Stats. 1865-6, 66); Code of Civil Procedure, sec. 91.

In 1893 the Legislature passed the so-called County Government Act, (Stats. 1893, 346), by which it classified counties by population and under that classification regulated the compensation and fees of all county and township officers. In 1895, the Legislature passed an act to establish the fees of county, township, and other officers, and of jurors and witnesses, within this state. (Stats. 1895, 267). It was held that this latter act applied to the City and County of San Francisco. *Miller v. Curry*, 113 Cal. 644; *Reid v. Groezinger*, 115 Cal. 551.

By the latter act the Legislature attempted to regulate the fees of justices of the peace without reference to the classification contained in the County Government Act. As to this provision, the Supreme Court held that the act of 1895 was unconstitutional, but that this fact did not invalidate the whole act. *Dwyer v. Parker*, 115 Cal. 544; *Reid v. Groezinger*, 115 Cal. 551.

In 1893, the Legislature passed an act entitled "An act to provide and regulate the manner of receiving and paying fees, etc., in cities and cities and counties having a population of over one hundred thousand inhabitants, and prescribing the duties of officers with reference thereto" (Stats. 1893, 127), by which it was provided that the various officers should no longer collect and receive the fees, but that they should give to the person demanding of them a service a receipt or acknowledgment, stating the nature of the service to be rendered, and the amount which by law was due therefor. This receipt, or certificate, is then to be taken by the demandant to the treasurer, and to him delivered with the money called for therein. The treasurer in turn issues his receipt, which must in like manner be taken to the officer, who issues a second certificate to the demandant and thereupon and thereafter the service is to be performed.

This act was held unconstitutional on the ground that it only applied to one class of municipal corporations, without reason appearing why it was not made applicable to all municipal corporations. *Rauer v. Williams*, 118 Cal. 401.

The provisions of this chapter, as to the manner of the payment of fees, were evidently taken from the act of March 11, 1893,

(Stats. 1893, 127). Sections 2, 5, 7, 8, 9, 10, and 11 are copied from that act. But sections 3 and 4 of the charter are entirely different from the corresponding provisions of the statute. Section 2 of the statute provides that such fees shall “be paid *by the person for whom such service is performed to the treasurer* of such city, or city and county, in the manner herein provided”; whereas section 2 of the charter provides that such fees must “be paid *by the officer receiving the same to the Treasurer* in the manner herein provided.” Again, while section 4 of the statute provides that the officer shall simply give a certificate, and that the person demanding the service shall pay the money to the treasurer, section 2 of the charter provides that “It shall be the duty of every officer authorized by law to charge, receive, or collect any fee, etc., . . . to deliver the same to the treasurer at the expiration of each business day.” So far the charter provisions make it clear that the fees are to be received by the officer and by him paid to the Treasurer. But in copying section 7 of the statute into the charter it is provided that the officer’s receipt shall state “the day and hour of the delivery to him of the treasurer’s receipt, . . . and the name of the person by whom such receipt is delivered to him.” This provision, on the other hand, is in exact accord with the act of 1893 and contemplates a payment to the treasurer direct by the person demanding the service; but compliance with this provision as to the form of the receipt is rendered impossible by the provision that the fees shall be paid to the officer performing the service and by him to the treasurer “at the expiration of each business day.”

SEC. 4. It shall be the duty of every officer authorized by law to charge, receive or collect any fee, commission, percentage, allowance, or compensation for the performance of any official service or duty of any kind or nature, or rendered in any official capacity, or by reason of any official duty or employment, to deliver the same to the Treasurer at the expiration of each business day. The Treasurer shall thereupon deliver to such officer a

receipt for the money so paid, which shall show the amount of money received, the day and hour when paid, the name of the officer paying the same, the nature of the service performed, and the name and official designation of the person by whom the service was performed; and like entries shall be made upon the stub of such receipt, which shall be kept by the Treasurer. The Treasurer shall place all such moneys in a fund to be designated the "Unapportioned Fee Fund," which is hereby created, and shall keep such fund as other funds in the treasury are kept, and shall be liable on his official bond for all money so received.

SEC. 5. The Auditor or other proper officer must prepare and deliver from time to time to the Treasurer, and to every officer authorized by law to charge any fee, commission, percentage, allowance, or compensation, for the performance of any official service or duty, as many official receipts as may be required, charging therewith the Treasurer or other officer receiving them. Such official receipts must be bound into books containing not less than one hundred such receipts, and numbered consecutively, beginning with number one in each class required for each officer for each fiscal year, and provided with a stub corresponding in number with receipt. When the books containing receipts are exhausted by the officer receiving them, he shall return the stubs thereof to the Auditor or other proper officer, in whose custody they shall remain thereafter.

SEC. 6. When a receipt as herein provided is issued by the Treasurer he must state therein the date of payment, the name of the person making the payment, the

amount of such payment, the nature of the service for which the charge is made, and the name and official designation of the officer performing the service, and shall make corresponding entries on the stub of each receipt.

See Cons. Act, (Stats. 1856, 145), sec. 91; Political Code, sec. 4146.

SEC. 7. When any receipt is issued by any officer other than the Treasurer as herein provided, he shall state therein the day and hour of the delivery to him of the Treasurer's receipt, the nature of the service therein described, and the amount charged therefor, and the name of the person by whom such receipt is delivered to him, and shall make corresponding entries on the stub to which such receipt is attached.

SEC. 8. On the first day of each month the Treasurer must make to the Auditor a report under oath of all moneys received by him during the preceding month, showing the date and number of the receipt on which the money was received, the amount of each payment, by whom paid, the nature of the service, and the name and official designation of the officer performing the service. At the same time, or oftener, if required by the Auditor, the Treasurer shall exhibit to the Auditor all official receipts received by him during the previous month, and all official receipts remaining in his hands, unused or not issued, at the close of business on the last day of the preceding month.

Political Code, sec. 4154.

SEC. 9. On the first day of each month every officer authorized by law to charge any fee, commission, per-

centage, allowance or compensation, must make to the Auditor a report under oath of all official receipts issued by him during the preceding month, showing the date and number of each receipt, to whom issued, the nature of the service for which the charge was made, and the amount of such charge; and must at the same time, or oftener, if required, exhibit to the Auditor, or other proper officer, all the Treasurer's receipts deposited with him during the preceding month, and all receipts remaining in his hands, unused or not issued, at the close of business on the last day of each preceding month.

SEC. 10. Upon receiving the reports prescribed by sections eight and nine of this chapter, the Auditor shall examine and settle the accounts of each officer, and apportion such moneys to the fund or funds to which they are appropriated by law, and certify such apportionment to the Treasurer, who shall thereupon transfer from the "Unapportioned Fee Fund" the amounts so certified, and credit each fund entitled thereto with the proper amount so apportioned.

SEC. 11. Every officer who is by law allowed to charge and collect mileage for the service of process, or other like service, shall at the end of each month, prepare and deliver to the Auditor a statement showing each process served, the title of the cause, the name of the deputy or other subordinate officer who made the service, the number of miles actually traveled in making such service, the exact day when such service was made and between what hours of the day, and such statement shall be verified by the oath of such officer. The Auditor shall examine such statement, and issue his warrant

upon the Treasurer for such amount of money as will reimburse such officer for his lawful expenses in making such service. Such warrant shall be paid by the Treasurer, without further approval, out of the "Unapportioned Fee Fund." No extra mileage shall be charged or allowed for service of two or more processes served on the same trip by the same deputy or deputies, except for extra mileage actually traveled in serving additional process. All mileage charged in violation of this section shall be disallowed by the Auditor, and all amounts disallowed for any reason shall be apportioned as other moneys in the "Unapportioned Fee Fund."

SEC. 12. When an officer, legally authorized to employ a person other than one of his deputies or assistants at a stated compensation fixed by law, has employed such person, and in pursuance of such employment such person has rendered the service for which he was employed, such officer shall, at the end of each month, prepare and deliver to the Auditor a statement verified by the oath of such officer, showing the case or instance in which such service was performed, for whom performed, the name of the person so employed, by whom the service was performed, the amount of the charge therefor, the time actually employed in performing such service, and the dates of the beginning and ending of the period during which such person was so employed. The Auditor shall thereupon examine such statement, and if he finds the same correct, he shall audit and allow the verified demand of such person so employed and performing the service for the sum or sums so earned by him for such service, and the Treasurer shall pay such demand so

audited and allowed, without further approval, out of the "Unapportioned Fee Fund."

SEC. 13. The demand of the Auditor for his monthly salary shall be audited and allowed by the Mayor. All other demands on account of salaries fixed by law, ordinance, or this charter, and made payable out of the treasury, may be allowed by the Auditor without any previous approval. All demands payable out of the Common School Fund must, before they can be allowed or paid, be previously approved by the Board of Education. Demands payable out of the treasury for salaries, wages, or compensation of deputies, clerks, assistants, or employees, in any office or department, must, before they can be audited or paid, be first approved in writing by the officer, board, department or authority under whom, or in which, such demand originated. All other demands payable out of any funds in the treasury, must, before they can be allowed by the Auditor, or recognized, or paid, be first approved by the department, board or officer, in which the same has originated, and in all such cases must be approved by the Supervisors.

Every demand against the city and county shall, in addition to the other entries and indorsements upon the same required by this charter, show: 1. The ordinance or authorization under which the same was allowed. 2. The name of the board, department or authority authorizing the same. 3. The fiscal year within which the indebtedness was incurred. 4. The appropriation provided to meet the demand. 5. The name of the specific fund out of which the demand is payable. Each demand shall have written or printed upon it a statement that

the same can only be paid out of the income and revenue provided, collected and paid into the proper specific fund in the treasury for the fiscal year within which the indebtedness was incurred, and shall refer to chapter II of this article, and be numbered with reference to the fund out of which it is payable.

SEC. 14. Whenever any person has, or has received, moneys or other personal property belonging to the city and county, or has been intrusted with the collection, management or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the city and county, and fails to render an account thereof to, and make settlement with, the Treasurer within the time prescribed by law; or, when no particular time is specified, fails to render such account and make such settlement, or who fails to pay into the treasury any moneys belonging to the city and county upon being required to do so by the Auditor, within twenty days after such requisition, the Auditor must state an account with such person, charging twenty-five per centum damages, and interest at the rate of ten per centum per annum from the time of such failure.

A copy of such account in any suit therein is prima facie evidence of the things therein stated. In case the Auditor cannot for want of information state an account, he may in any action brought by him aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the city and county. The City Attorney must prosecute all actions that may be brought under this section within ten days after notification by the Auditor.

CHAPTER IV.

Payment of Claims.

SECTION 1. The salaries and compensation of all officers, including policemen and employees of all classes, and all teachers in the public schools, and others employed at fixed wages, shall be payable monthly. Any demand upon the treasury accruing under this charter shall not be paid, but shall be forever barred by the limitation of time, unless the same be presented for payment, properly audited, within one month after such demand became due and payable; or, if it be a demand which must be passed and approved by the Supervisors or Board of Education, or by any other board, then within one month after the first regular meeting of the proper board held next after the demand accrued; or, unless the Supervisors shall, within six months after the demand accrued as aforesaid, on a careful examination of the facts, resolve that the same is in all respects just and legal, and the presentation of it, as above required, was not in the power either of the original party interested or his agent, or the present holder; in which case they may by ordinance revive such claim; but it shall be barred in the same manner unless presented for payment within twenty days thereafter. No valid demand arising subsequent to the claim which may be revived as aforesaid shall be rendered invalid by reason of such revival exhausting the fund out of which subsequent claims might otherwise be paid. Such revived claim shall take rank as of the day of its revival.

Cons. Act, (Stats. 1856, 145), sec. 90; note to art. II, ch. II, sec. 8 of this charter.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

CHAPTER I.

The Mayor.

SECTION 1. The chief executive officer of the city and county shall be designated the Mayor. He shall be an elector of the city and county at the time of his election, and must have been such for at least five years next preceding such time. He shall be elected by the people and hold office for two years. He shall receive an annual salary of six thousand dollars. He may appoint a secretary who shall receive an annual salary of twenty-four hundred dollars; an usher who shall receive an annual salary of nine hundred dollars; and a stenographer and type-writer who shall receive an annual salary of nine hundred dollars. All of said appointees shall hold their positions at the pleasure of the Mayor.

The mayor.—Municipal Corporation Act, (Stats. 1883, 93), secs. 118-120.

The mayor is a municipal officer. *Kahn v. Sutro*, 114 Cal. 316.

He is a member of the Board of New City Hall Commissioners. Act of March 24, 1876, (Stats. 1875-6, 461).

Salary of: Act of May 17, 1861, (Stats. 1861, 554).

Duty of as to redemption of bonds: Charter, art. III, ch. II, sec. 7.

SEC. 2. The Mayor shall vigilantly observe the official conduct of all public officers and the manner in which they execute their duties and fulfill their obligations. The books, records and official papers of all de-

partments, officers and persons in the employ of the city and county shall at all times be open to his inspection and examination. He shall take special care that the books and records of all departments, boards, officers and persons are kept in legal and proper form. When any official defalcation or wilful neglect of duty or official misconduct shall come to his knowledge, he shall suspend the delinquent officer or person from office pending an official investigation.

The Mayor shall from time to time recommend to the proper officers of the different departments such measures as he may deem beneficial to public interests. He shall see that the laws of the state and ordinances of the city and county are observed and enforced. He shall have a general supervision over all the departments and public institutions of the city and county, and see that they are honestly, economically and lawfully conducted, and shall have the right to attend the meetings of any of the boards provided for in this charter, and offer suggestions at such meetings. He shall take all proper measures for the preservation of public order and the suppression of all riots and tumults, for which purpose he may use and command the police force. If such police force is insufficient, he shall call upon the Governor for military aid in the manner provided by law, so that such riots or tumults may be promptly and effectually suppressed.

SEC. 3. The Mayor shall see that all contracts and agreements with the city and county are faithfully kept and fully performed. It shall be the duty of every officer and person in the employ or service of the city and

county, when it shall come to his knowledge that any contract or agreement with the city and county, or with any officer or department thereof, or relating to the business of any office, has been or is about to be violated by the other contracting party, forthwith to report to the Mayor all facts and information within his possession concerning such matter. A wilful failure to do so shall be cause for the removal of such officer or employee. The Mayor shall give a certificate on demand to any person reporting such facts and information that he has done so, and such certificate shall be evidence in exoneration from charge of neglect of duty.

The Mayor must institute such actions or proceedings as may be necessary to revoke, cancel or annul all franchises that may have been granted by the city and county to any person, company or corporation which have been forfeited in whole or in part or which for any reason are illegal and void and not binding upon the city. The City Attorney on demand of the Mayor must institute and prosecute the necessary actions to enforce the provisions of this section.

The Mayor shall have power to postpone final action on any franchise that may be passed by the Supervisors until such proposed franchise shall be ratified or rejected by a majority of the votes cast on the question at the next election.

It has been said, but not decided, that the city and county has no power to institute an action to secure a forfeiture of a franchise, but that that power is vested exclusively in the attorney-general. *People v. Sutter Street Ry. Co.*, 117 Cal. 604, 612. See also *In re New York etc. R. R. Co.*, 70 N. Y. 327.

To postpone action on franchise: Charter, art. II, ch. II, sec. 7.

SEC. 4. The Mayor shall appoint all officers of the city and county whose election or appointment is not otherwise specially provided for in this charter or by law. When a vacancy occurs in any office, and provision is not otherwise made in this charter or by law for filling the same, the Mayor shall appoint a suitable person to fill such vacancy, who shall hold office for the remainder of the unexpired term.

SEC. 5. The Mayor shall be president of the Board of Supervisors by virtue of his office. He may call extra sessions of the board, and shall communicate to them in writing the objects for which they have been convened; and their acts at such sessions shall be confined to such objects.

Charter, art. II, ch. I, sec. 5; Municipal Corporation Act, (Stats. 1883, 93), sec. 120.

SEC. 6. When and so long as the Mayor is temporarily unable to perform his duties, a member of the board shall be chosen president pro tempore, who shall act as such Mayor. When a vacancy occurs in the office of Mayor, it shall be filled for the unexpired term by the Supervisors.

Mayor *pro tem.*: Act of April 25, 1863. (Stats. 1863, 540), sec. 1, subdiv. 7; Municipal Corporation Act, (Stats. 1883, 93), sec. 119.

CHAPTER II.

The Auditor.

SECTION 1. The head of the finance department of the city and county shall be designated the Auditor. He shall be an elector of the city and county at the time of his election and must have been such for at least five years next preceding such time. He shall be elected by the people and hold office for two years. He shall receive an annual salary of four thousand dollars. The Auditor must always know the exact condition of the treasury and every demand upon it. He shall be in personal attendance at his office daily during office hours. He shall be the general accountant of the city and county, and shall receive and preserve in his office all accounts, books, vouchers, documents and papers relating to the accounts and contracts of the city and county, its debts, revenues and other financial affairs. He shall give information as to the exact condition of the treasury and of every appropriation and fund thereof, upon demand of the Mayor, the Supervisors, or any committee or members thereof.

The auditor.—Cons. Act, (Stats. 1856, 145), secs. 8, 14, 73, 82, 87, 92, 94; Political Code, secs. 4215-4224; Charter, art. III, ch. III; Act of April 9, 1880, (Stats. 1880, 27; *Ban. ed.*, 155); Municipal Corporation Act, (Stats. 1883, 93), sec. 121.

The auditor is a member of the Board of New City Hall Commissioners. Act of March 24, 1876, (Stats. 1875-6, 461).

He is also member of the Board of Election Commissioners of the City and County of San Francisco. Act of March 18, 1878, (Stats. 1877-8, 299).

He is a municipal officer. *Kahn v. Sutro*, 114 Cal. 316.

Salary of: Act of May 17, 1861, (Stats. 1861, 554).

Election of: Act of April 2, 1866, (Stats. 1865-6, 718).

Assistants of: Act of March 30, 1872, (Stats. 1871-2, 735),
sec. 1, subdiv. 20.

Duty as to licenses: Act of March 30, 1872, (Stats. 1871-2,
735).

Duty as to redemption of bonds: Charter, art. III, ch. II,
sec. 7.

SEC. 2. The Auditor shall appoint a Deputy Auditor, who shall possess the qualifications required of the Auditor, and who shall receive an annual salary of twenty-four hundred dollars. The Auditor may also appoint two assistant deputies who shall each receive an annual salary of fifteen hundred dollars, and two clerks who shall each receive an annual salary of twelve hundred dollars. He may employ such number of extra clerks during the time their services may be necessary for the lawful discharge of his official duties, as the Board of Supervisors may designate. Such extra clerks shall each receive a salary not to exceed one hundred dollars a month for the time they shall be actually employed. The Auditor shall be allowed to expend not exceeding eighteen hundred dollars a year for counsel and attorney's fees.

SEC. 3. The Auditor shall keep an account of all moneys paid into and out of the treasury, and the Treasurer shall pay no money out of the treasury except upon demands approved by the Auditor. Any ordinance or law providing for the payment of any demand out of the treasury or any fund thereof (whether from public funds or from private funds deposited therein) shall always be construed as requiring the auditing of such demand by the Auditor before the same be paid.

SEC. 4. He shall number and keep an official record of all demands audited by him, showing the number, date, amount, name of the original holder, on what account allowed, against what appropriation drawn, out of what fund payable, and, if previously approved or allowed, by what officer, department or board it has been so approved or allowed. It shall be misconduct in office for the Auditor to deliver a demand with his official approval until this requirement shall have been complied with.

SEC. 5. The Auditor shall approve no demand unless the same has been allowed by every officer, board, department and committee required to act thereon.

Demand must be approved by the board of supervisors before it is approved by the auditor. Charter, art. II, ch. I, sec. 19.

SEC. 6. No demand shall be allowed by the Auditor in favor of any corporation or person in any manner indebted to the city and county, except for taxes not delinquent, without first deducting the amount of any indebtedness of which he has notice; nor in favor of any person having the collection, custody or disbursement of public funds, unless his account has been presented, passed, approved and allowed as herein required; nor in favor of any officer who has neglected to make his official returns or reports in the manner and at the time required by law, ordinance, or the regulations of the Supervisors; nor in favor of any officer who has neglected or refused to comply with any of the provisions of law regulating his duties, nor in favor of any officer or employee for the time he shall have absented himself without legal cause from the duties of his office during

office hours. The Auditor must always examine on oath any person receiving a salary from the city and county touching such absence.

The Auditor may require any person presenting for settlement an account or claim for any cause against the city and county to be sworn before him touching such account or claim, and when so sworn, to answer orally as to any facts relative to the justice of such account or claim. Moneys placed in the Special Deposit Fund shall not be subject to the provisions of this section.

An auditor can not refuse to draw a warrant because there is no money in the treasury. *Babcock v. Goodrich*, 47 Cal. 488.

Except in cases where the board of supervisors have exceeded their power, the auditor can not assume to set up his judgment in opposition to theirs in respect to the issuance of a warrant. *Babcock v. Goodrich*, 47 Cal. 488; *Sehorn v. Williams*, 110 Cal. 621; *Lamberson v. Jefferds*, 118 Cal. 363.

The auditor is not protected by an order of the board of supervisors allowing an illegal claim. *Lamberson v. Jefferds*, 116 Cal. 492; *Von Schmidt v. Widber*, 105 Cal. 151; *Merriam v. Barnum*, 116 Cal. 619; *Linden v. Case*, 46 Cal. 172; *Foster v. Coleman*, 10 Cal. 279; *Welsh v. Bramlet*, 98 Cal. 219.

Mandamus is the proper remedy by which to compel the auditor to draw a warrant. *Babcock v. Goodrich*, 47 Cal. 488.

As to the auditor's certificate to contracts, see Charter, art. III, ch. I, sec. 10.

SEC. 7. Every demand upon the Treasurer, except the salary of the Auditor, must, before it can be paid, be presented to the Auditor, who shall satisfy himself whether the money is legally due, and its payment authorized by law, and against what appropriation payable and out of what fund it is payable. If he allow it, he shall endorse upon it the word "Allowed," with the name

of the fund out of which it is payable, and the date of such allowance, and sign his name thereto. No demand shall be approved, allowed, audited or paid unless it specify each special item, date and amount composing it, and refer by chapter and section to the provisions of this charter authorizing the same.

The auditor is liable on his official bond for auditing an improper demand. *Von Schmidt v. Widber*, 105 Cal. 151.

SEC. 8. The Auditor shall keep a register of warrants, showing the funds upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered. He shall not allow any demand out of its order, nor give priority to one demand over another drawn upon the same specific fund, except for the purpose of determining its legality.

CHAPTER III.

The Treasurer.

SECTION 1. There shall be a Treasurer of the city and county, who shall be an elector of the city and county at the time of his election and who must have been such for at least five years next preceding such time. He shall be elected by the people, and hold his office for two years. He shall receive an annual salary of four thousand dollars, which shall be in full compensation for all his services. He may appoint a chief deputy who shall receive an annual salary of twenty-four hundred dollars, two assistant deputies who shall each receive an

annual salary of eighteen hundred dollars and one clerk who shall receive an annual salary of twelve hundred dollars.

The treasurer.—The treasurer is a part of the appointing power for the license collector. Act of March 30, 1872, (Stats. 1871-2, 736).

He is a member of the Board of Election Commissioners for the City and County of San Francisco. Act of March 18, 1878, (Stats. 1877-8, 299).

He is a municipal officer. Kahn v. Sutro, 114 Cal. 316.

Election of: Act of April 2, 1866, (Stats. 1865-6, 718).

Duty of as to hospital bonds: Act of March 28, 1868, (Stats. 1867-8, 458).

Duty of as to collateral inheritance tax: Act of March 23, 1893, (Stats. 1893, 193).

Duty of as to salaries: Act of May 17, 1861, (Stats. 1861, 554), sec. 4.

Salary of: Act of May 17, 1861, (Stats. 1861, 554).

Duty of as to Special Deposit Fund: Act of May 17, 1861, (Stats. 1861, 554), sec. 1.

Salary of clerk of: Act of April 4, 1863, (Stats. 1863, 168), sec. 1, subdiv. 14.

Duty of as to redemption of bonds: Charter, art III, ch. II, sec. 7.

Office hours: Charter, art. XVI, sec. 14.

SEC. 2. The Treasurer shall receive and safely keep all moneys which shall be paid into the treasury. He shall not lend, exchange, use, nor deposit the same, or any part thereof, to or with any bank, banker or person; nor pay out any part of such moneys, nor allow the same to pass out of his personal custody, except upon demands authorized by law or this charter, and after they shall have been approved by the Auditor. At the close of business each day he shall take an account of

and enter in the proper book the exact amount of money on hand. At the end of every month he shall make and file with the Mayor and publish quarterly in the official newspaper a statement of the condition of the treasury, showing the amounts of receipts into and payments from the treasury, and on what account, and out of what fund. If he violate any of the provisions of this section, he shall be guilty of misconduct in office, and be liable to removal therefrom, and be proceeded against accordingly.

He shall keep the accounts belonging to each fund separate and distinct, and shall in no case pay demands chargeable against one fund out of moneys belonging to another. He shall be in personal attendance at his office each day during office hours. No fees of any kind shall be retained by him, but the same, from whatsoever source received or derived, shall be paid by him into the treasury.

The treasurer is not liable on his official bond for money taken from him by robbers, by irresistible force and violence. *Healdsburg v. Mulligan*, 113 Cal. 205.

He has no authority to loan the moneys of the county, nor to deposit them as a general deposit in a bank, although such deposit be made by him as an agent of the county, and not upon his individual account; and he is not excused from liability to pay over the amount of moneys so deposited by reason of the failure of the bank in which the deposits were made. *People v. Wilson*, 117 Cal. 242; Penal Code, sec. 424.

SEC. 3. For the better security of the moneys in the treasury, there shall be provided a joint custody safe in which shall be kept the moneys of the city and county. Said safe shall have two combination locks, neither one of which alone will open the safe. The Treasurer shall have the knowledge of one combination and the Auditor

of the other. The Auditor shall be joint custodian with the Treasurer of all funds in the joint custody safe; but shall have no control over them except to open and close the safe in conjunction with the Treasurer, when requested to do so in his official capacity, and shall not be held responsible on his official bond for any shortage which may occur in the treasury.

The gold shall be kept in bags containing twenty thousand dollars each, and the silver in bags containing one thousand dollars each. To each bag shall be attached a tag showing the nature and amount of coin contained therein. Each bag shall be sealed with the seal of each custodian.

There shall be kept in the safe a joint custody book, showing the amount and description of all funds in the safe, and whenever any amounts are withdrawn, the Auditor and Treasurer shall make the proper entry in the joint custody book and initial the same. If on account of sickness or urgent necessity the Auditor is unavoidably absent the Deputy Auditor shall perform his duties. The estimated amount of money required daily for the payment of demands against the treasury shall be taken from the joint custody safe and kept in another safe; and the money therein shall be balanced daily at the close of business hours.

SEC. 4. The Treasurer, on receiving any money into the treasury, shall make out and sign two receipts for the money. Such receipts shall be alike, except upon the face of one of them shall appear the word "Original," and upon the face of the other shall appear the word "Duplicate." Such receipts shall be numbered

and dated, and shall specify the amount, on what account and from what person or officer received, and into what fund or on what account paid. The Treasurer shall enter upon the stubs of such receipts a memorandum of the contents thereof, and deliver the receipt marked "Original" to the person or officer paying such money into the treasury, and forthwith deliver the receipt marked "Duplicate" to the Auditor, who shall write upon its face the date of its delivery to him, and charge the Treasurer with the amount specified therein, and file the receipt in his office.

SEC. 5. No demand shall be paid by the Treasurer unless it specify each several item, date and amount composing it, and refer by title, date and section to the law, or ordinance or provision of this charter authorizing the same; but the allowance or approval of the Auditor, or of the Supervisors, or of any department, board or officer, of any demand which is not authorized by law or this charter, and which upon its face appears not to have been expressly made payable out of the funds to be charged therewith, shall afford no warrant to the Treasurer for paying the same.

If the treasurer pays a demand which is void on its face, he is liable on his official bond, although the demand has been approved by the auditor. *Von Schmidt v. Widber*, 105 Cal. 151.

Demands must be approved by the board of supervisors before they are paid by the treasurer. Charter, art. II, ch. I, sec. 19.

Demands to contain what: Charter, art. II, ch. III, sec. 6.

SEC. 6. Every lawful demand upon the treasury, audited and allowed as in this charter required, shall in all cases be paid upon presentation, if there be sufficient money in the treasury applicable to the payment of such

demand, and on payment canceled with a punch, cutting the word "Canceled" therein, and the proper entry thereof made. If, however, there be not sufficient money so applicable, then it shall be registered in a book kept for that purpose by the Treasurer. Such register shall show the special number given by the Supervisors or other authority, and also by the Auditor to each demand presented, also when presented, the date, amount, name of original holder, and on what account allowed and against what appropriation drawn and out of what specific fund payable. All demands shall be paid in the order of their registration. Each demand upon being so registered shall be returned to the party presenting it, with the endorsement of the word "Registered," and dated and signed by the Treasurer; but the registration of any demand shall not operate to recognize or make valid such demand if incurred contrary to any of the provisions of this charter.

Political Code, secs. 4147, 4148. See also note to sec. 5 of this chapter.

CHAPTER IV.

The Assessor.

SECTION 1. There shall be an Assessor of the city and county, who shall be an elector of the city and county at the time of his election and who must have been such for at least five years next preceding such time. He shall be elected by the people and hold office for four years. He shall receive an annual salary of four thousand dollars which shall be in full compensation for all his services. He may appoint a chief deputy who shall

receive an annual salary of twenty-four hundred dollars; one cashier who shall receive an annual salary of eighteen hundred dollars; six assistant deputies who shall each receive an annual salary of eighteen hundred dollars; twenty-one clerks who shall each receive an annual salary of twelve hundred dollars; and during four months of the year not more than one hundred clerks who shall each be paid at the rate of not more than one hundred dollars a month during the time of their employment.

The assessor.—Political Code, secs. 3627-3671, 3820-3831, 3839, 3862; Municipal Corporation Act, (Stats. 1883, 93), sec. 129; Act of April 1, 1897, (Stats. 1897, 452); Cons. Act, (Stats. 1856, 145), sec. 78.

Salary of: Act of May 17, 1861, (Stats. 1861, 554).

Deputies of: Act of Jan. 25, 1870, (Stats. 1869-70, 23).

Election of: Political Code, sec. 4109.

Extra assistants: Act of March 30, 1872, (Stats. 1871-2, 735), sec. 1, subdiv. 20.

SEC. 2. The Assessor shall assess all taxable property within the city and county at the time and in the manner prescribed by the general laws of the state.

CHAPTER V.

The Tax Collector.

SECTION 1. There shall be a Tax Collector of the city and county, who shall be an elector of the city and county at the time of his election and who must have been such for at least five years next preceding such time. He shall be elected by the people and hold office for two years. He shall receive an annual salary of four thousand dollars, which shall be in full compensation

for all his services. He may appoint one chief deputy, who shall receive an annual salary of twenty-four hundred dollars; one cashier who shall receive an annual salary of twenty-four hundred dollars; fifteen deputies who shall each receive an annual salary of fifteen hundred dollars, and extra clerks who shall each be paid at the rate of not more than one hundred dollars a month during the time of their employment, but the total amount of payment for such extra clerks shall not exceed thirty-six thousand dollars a year.

The tax collector.—Political Code, secs. 3746-3831; Municipal Corporation Act, (Stats. 1883, 93), sec. 128; Act of April 1, 1897, (Stats. 1897, 452), sec. 149; Cons. Act, (Stats. 1856, 145), secs. 8, 77, 78; Act of March 27, 1868, (Stats. 1867-8, 410).

Extra assistants of: Act of March 30, 1872, (Stats. 1871-2, 735), sec. 1, subdiv. 20.

Salary of: Act of May 17, 1861, (Stats. 1861, 554).

Election of: Act of April 2, 1866, (Stats. 1865-6, 718), sec. 4.

Deputies of: Act of March 25, 1868, (Stats. 1867-8, 292).

The tax collector is a municipal officer. *Kahn v. Sutro*, 114 Cal. 316.

The tax collector has no authority to submit an agreed case involving the validity of a tax to a court. *Bailey v. Johnson*, 121 Cal. 562.

SEC. 2. The Tax Collector must collect all licenses which may at any time be required by law or ordinance to be collected within the city and county. He shall be charged with all taxes levied upon real and personal property within the city and county, upon the final settlement to be made by him according to law, or this charter. He shall pay into the treasury, without any deduction for commissions, fees or charges of any kind or on

any account, the full amount of all taxes, assessments and moneys received by him, and not previously paid over, including all moneys paid under protest, and money received for taxes paid more than once, and for street assessments. He shall also be charged with, and be debtor to the city and county for, the full amount of all taxes due upon the delinquent tax list delivered to him for collection, unless it appear to the satisfaction of the Supervisors expressed by resolution, that it was out of his power to collect the same by levy and sale of property liable to be seized and sold therefor.

SEC. 3. The Tax Collector may appoint an attorney to prosecute actions for the collection of delinquent taxes, and may agree on paying him as compensation therefor a stated percentage out of the amounts recovered; but such percentage shall in no case exceed fifteen per centum of the amounts recovered.

SEC. 4. He shall examine all persons liable to pay licenses, and see that licenses are taken out and paid for. In the performance of their official duties, he and his deputies shall have the same powers as police officers in serving process and in making arrests. He may demand the exhibition of any license for the current term from any person, firm or corporation engaged or employed in the transaction of any business for which a license is required; and if such person, firm or corporation shall refuse or neglect to exhibit such license, the same may be revoked forthwith by the Tax Collector.

SEC. 5. The Auditor shall from time to time deliver to the Tax Collector such city and county licenses as may be required, and sign the same and charge them to

the Tax Collector, specifying in the charge the amounts thereof named in such licenses respectively and the class of licenses, and take receipts therefor, and the Tax Collector shall sign and collect the same. The Tax Collector shall once in every month, and oftener when required by the Auditor, make to the Auditor a report under oath of all licenses sold and on hand, and of all amounts paid to the Treasurer, and shall also in that regard comply with the regulations which may be prescribed by the Supervisors. At the time of making such report, the Tax Collector shall exhibit to the Auditor all licenses on hand and the Treasurer's receipts for all moneys paid into the treasury.

CHAPTER VI.

The Coroner.

SECTION 1. There shall be a Coroner of the city and county, who shall be an elector of the city and county at the time of his election and who must have been such for at least five years next preceding such election. He shall be elected by the people and hold office for two years. He shall receive an annual salary of four thousand dollars. He shall perform such duties as may be prescribed by law or ordinance. He shall have the control and management of the morgue of the city and county under such ordinances as the Supervisors may adopt.

The coroner.—Political Code, secs. 4285-4290; Penal Code, secs. 1510-1519; Act of March 14, 1895, (Stats. 1895, 52); Act of March 26, 1895, (Stats. 1895, 168); Act of February 8, 1872, (Stats. 1871-2, 81); Act of March 30, 1874, (Stats. 1873-4,

194); Act of March 16, 1872, (Stats. 1871-2, 403); Act of March 23, 1876, (Stats. 1875-6, 397); Act of March 30, 1874, (Stats. 1873-4, 908); Act of March 23, 1893, (Stats. 1893, 190); Municipal Corporation Act, (Stats. 1883, 93), sec. 135; Act of April 1, 1897, (Stats. 1897, 452), secs. 142-147.

Election of: Act of April 2, 1866, (Stats. 1865-6, 718), sec. 5.

The coroner is a county officer. *Kahn v. Sutro*, 114 Cal. 316.

Consolidated governments may provide by freeholders' charter for the manner in which, the times at which, and terms for which the several county officers shall be elected or appointed, for their compensation, and for the number and compensation of their deputies. Cal. Con., art. XI, sec. 8½.

SEC. 2. He may appoint an autopsy physician who shall receive an annual salary of twenty-four hundred dollars; a chief deputy, who shall receive an annual salary of twenty-four hundred dollars; three assistant deputies who shall each receive an annual salary of fifteen hundred dollars; a stenographer and typewriter who shall receive an annual salary of eighteen hundred dollars; and a messenger who shall receive an annual salary of nine hundred dollars.

CHAPTER VII.

The Recorder.

SECTION 1. There shall be a Recorder of the city and county, who shall be an elector of the city and county at the time of his election and who must have been such for at least five years next preceding such election. He shall be elected by the people and hold office for two years. He shall receive an annual salary of thirty-six hundred dollars. He may appoint a chief deputy, who shall receive an annual salary of eighteen hundred dol-

lars; two assistant deputies who shall each receive an annual salary of fifteen hundred dollars. He may also appoint as many copyists as he may deem necessary, who shall receive not more than eight cents for each one hundred words actually written; but no copyist shall be paid a greater compensation at this rate than amounts in the aggregate to one hundred dollars a month.

The recorder.—Political Code, secs. 4234-4246; Municipal Corporation Act, (Stats. 1883, 93), sec. 131; Act of April 1, 1897. (Stats. 1897, 452), secs. 119-131; Cons. Act, (Stats. 1856, 145), sec. 8.

Salary of: Act of May 17, 1861, (Stats. 1861, 554).

Deputies of: Act of April 4, 1863, (Stats. 1863, 168), sec. 1, subdiv. 17.

The recorder is a county officer. *Kahn v. Sutro*, 114 Cal. 316.

As to the authority of the city and county over county officers, see Cal. Con., art. XI, sec. 8½.

Election of: Act of April 2, 1866, (Stats. 1865-6, 718), sec. 5.

Duty as to outside lands: Act of March 27, 1868. (Stats. 1867-8, 410).

SEC. 2. The Recorder shall take into his custody and safely keep all books, records, maps and papers deposited in his office. Upon demand and payment of the fees prescribed therefor by law or by ordinance, he must furnish to any one applying therefor a copy of any such book, record, map or paper, certified under the hand and seal of his office. When any papers are presented for filing or recording, he or his deputies shall write on the margin of each paper so presented the number of folios, the amount paid for recording the same, and shall number consecutively all instruments and documents filed in his office. He shall also perform all other duties at the time and in the manner prescribed by the general laws of the state.

ARTICLE V.

LEGAL DEPARTMENT.

CHAPTER I.

The Superior Court Judges.

SECTION 1. The Judges of the Superior Court of the city and county may appoint not to exceed five interpreters of foreign languages, who shall act as such interpreters in criminal actions and proceedings in all the courts in the city and county, and in examinations before coroner's juries.

Charter, art. II, ch. II, sec. 1, subdiv. 20.

SEC. 2. The stenographers in the criminal departments of the Superior Court shall each receive an annual salary not exceeding twenty-four hundred dollars which shall be in full compensation for all services including transcription and all stationery used by them.

The amount of the compensation is to be fixed by the board of supervisors. Charter, art. II, ch. II, sec. 1, subdiv. 20.

CHAPTER II.**The City Attorney.**

SECTION 1. There shall be an attorney and counselor of the city and county, who shall be styled City Attorney, and who shall receive an annual salary of five thousand dollars. He shall be elected by the people and shall hold office for the period of two years. He must

be at the time of his election an elector of the city and county and qualified to practice in all the courts of this State, and he must have been so qualified for at least ten years next preceding his election, during five years of which he must have been an actual resident of the city and county. He shall devote his entire time and attention to the duties of his office.

The city attorney.—Act of March 11, 1891, (Stats. 1891, 95); Municipal Corporation Act, (Stats. 1883, 93), sec. 133.

The city attorney is a municipal officer. *Kahn v. Sutro*, 114 Cal. 316.

Election of: Act of March 25, 1862, (Stats. 1862, 98); Act of April 2, 1866, (Stats. 1865-6, 718), sec. 4.

Salary of: Act of March 25, 1862, (Stats. 1862, 98).

Clerks of: Act of March 4, 1872, (Stats. 1871-2, 232).

He is a member of the Board of New City Hall Commissioners. Act of March 24, 1876, (Stats. 1875-6, 461).

The city attorney cannot receive extra compensation for services rendered during his term of office in any suit against the city, however important the suit, or however valuable his services may be to the city; and to allow such extra compensation is an unconstitutional increase of the compensation of his office during the term for which he was chosen. *Buck v. Eureka*, 109 Cal. 504.

SEC. 2. He must prosecute and defend for the city and county all actions at law or in equity, and all special proceedings for or against the city and county; and whenever any cause of action at law or in equity or by special proceedings exists in favor of the city and county, he shall commence the same when within his knowledge, and if not within his knowledge, when directed to do so by resolution of the Supervisors. He shall give legal advice, in writing, to all officers, boards and commissions named in this charter, when requested so to do by

them, or either of them, in writing, upon questions arising in their separate departments involving the rights or liabilities of the city and county. He shall not settle or dismiss any litigation for or against the city and county under his control unless upon his written recommendation he is ordered to do so by the Mayor and Supervisors.

SEC. 3. He shall keep on file in his office all written communications and opinions given by him to any officer, board or department; the briefs and transcripts used in causes wherein he appears; and bound books of record and registry of all actions or proceedings in his charge in which the city and county is interested.

SEC. 4. He shall deliver all books and records, reports, documents, papers, statutes, law books and property of every description in his possession, belonging to his office, or to the city and county, to his successor in office, who shall give him duplicate receipts therefor, one of which he shall file with the Auditor.

SEC. 5. The City Attorney may appoint four assistants, the first of whom shall receive an annual salary of thirty-six hundred dollars; the second an annual salary of three thousand dollars; the third an annual salary of twenty-four hundred dollars, and the fourth an annual salary of eighteen hundred dollars. He may also appoint a chief clerk, who shall receive an annual salary of eighteen hundred dollars; an assistant clerk who shall receive an annual salary of nine hundred dollars; a stenographer and typewriter who shall receive an annual salary of nine hundred dollars; and a messenger who shall receive an annual salary of nine hundred dol-

lars. An officer of the Police Department shall be permanently detailed by the Chief of Police for the purpose of doing the detective work necessary in preparing and prosecuting the litigation of the office, who shall continue to serve on such detail during the pleasure of the City Attorney. The assistants and the chief clerk must each, at the time of his appointment, be qualified to practice in all the courts of this state, and must have been so qualified at least two years next preceding his appointment. The assistants, clerks, typewriter and messenger shall be appointed by the City Attorney, and shall hold their offices at his pleasure, and the specific duties of each shall be prescribed by him.

CHAPTER III.

The District Attorney.

SECTION 1. The District Attorney shall be elected by the people and shall hold office for two years. He shall be an elector of the city and county and must at the time of his election be qualified to practice in all the courts of this state, and must have been so qualified for at least five years next preceding his election. He shall receive an annual salary of five thousand dollars.

The district attorney.—Political Code, secs. 4256-4259; Municipal Corporation Act, (Stats. 1883, 93), sec. 132; Act of April 1, 1897, (Stats. 1897, 452), secs. 132-134.

The district attorney is a county officer. *Kahn v. Sutro*, 114 Cal. 316.

As to the authority of the city and county over county officers, see Cal. Con., art. XI, sec. 8½.

Duty of as to collateral inheritance tax: Act of March 23, 1893, (Stats. 1893, 193).

Salary of: Act of May 17, 1861, (Stats. 1861, 554); amended March 28, 1872, (Stats. 1871-2, 653); Political Code, sec. 4330.

Clerk of: Act of May 17, 1861, (Stats. 1861, 554); Act of April 4, 1863, (Stats. 1863, 168); Act of March 25, 1874, (Stats. 1873-4, 602).

Election of: Act of April 2, 1866, (Stats. 1865-6, 718), sec. 5

Assistants of: Act of March 31, 1870, (Stats. 1869-70, 528), sec. 16.

To assist Coroner: Act of March 16, 1872, (Stats. 1871-2, 403).

SEC. 2. The District Attorney shall have all the powers conferred, and shall discharge all the duties imposed upon, the District Attorneys of counties by the general laws of this state, and in addition thereto shall attend, institute and conduct on behalf of the people, all prosecutions cognizable in the Police Court of the city and county. He shall draw all complaints and warrants in said Police Court, prosecute all forfeited recognizances therein, and all actions for the recovery of fines, penalties, and forfeitures accruing to the city and county; deliver receipts for money or property received in his official capacity, and file duplicates therefor with the County Treasurer; file with the Auditor on the first Mondays of January, April, July and October in each year, an itemized statement under oath showing all moneys received by him in his official capacity during the preceding three months; keep a register of his official business in which must be entered a note of every action, whether criminal or civil, prosecuted officially by him, and of the proceedings therein; and give, when required, without fee, advice to the Board of Police Commissioners, the Chief of Police, the Board of Health and

the Coroner, upon matters relating to the duties of their respective offices.

Duties.—Under the County Government Act, boards of supervisors have no power to employ counsel on behalf of the county to prosecute or assist in the prosecution of criminal cases prosecuted in the name of the people of the state. *Modoc v. Spencer*, 103 Cal. 498.

So they cannot employ counsel for mere legal advice, without contemplation of any suit. *Merriam v. Barnum*, 116 Cal. 619. See also: *Lamberson v. Jefferds*, 118 Cal. 363; *Merced v. Cook*, 120 Cal. 275.

The provision of the County Government Act, providing that all claims against the county presented by any member of the board of supervisors must, before allowance, be presented to the district attorney, who must indorse thereon his opinion as to the legality thereof, is valid. *Solano v. McCudden*, 120 Cal. 648.

As to the right of the district attorney to institute legal proceedings without an order of the board of supervisors, see *Ventura v. Clay*, 119 Cal. 213.

SEC. 3. He may appoint seven assistant district attorneys to aid him in the discharge of his official duties, three of whom shall act as prosecutors in the Superior Court, and shall each receive an annual salary of thirty-six hundred dollars, and four of whom shall act as the prosecuting attorneys of the Police Court, and shall each receive an annual salary of twenty-four hundred dollars. When any of the assistants of the District Attorney acting as such prosecuting attorneys in the Police Court are not actually engaged in work connected with prosecutions therein, they shall be at the call of the District Attorney for any service connected with his department. The assistants must each, at the time of his appointment, be qualified to practice in all the courts of this state, and must have been so qualified for at least two years next

preceding his appointment. The District Attorney may also appoint one chief clerk, who shall receive an annual salary of eighteen hundred dollars; one assistant clerk, who shall receive an annual salary of twelve hundred dollars; and one stenographer and typewriter who shall receive an annual salary of nine hundred dollars.

SEC. 4. The District Attorney may, in the name of the city and county, bid for and purchase property at execution sales under judgments for the recovery of fines, penalties or forfeitures accruing to the city and county.

CHAPTER IV.

The Public Administrator.

SECTION 1. The Public Administrator shall be elected by the people, and he shall hold office for two years. He shall have all the powers conferred, and shall discharge all the duties imposed upon, the public administrators of counties by the general laws of this state, except as in this charter otherwise specifically provided. He shall be entitled to all such fees as may be allowed by law to the Public Administrators of the counties of the state in full compensation for all his services.

Public administrator.—Code of Civil Procedure, secs. 1726-1744; Act of March 30, 1872, (Stats. 1871-2, 796); Municipal Corporation Act, (Stats. 1883, 93), sec. 134; Act of April 1, 1897, (Stats. 1897, 452), secs. 151-152.

The public administrator is a county officer. *Kahn v. Sutro*, 114 Cal. 316.

As to the authority of the city and county over county officers, see Cal. Con., art XI, sec. 8½.

Election of: Act of April 2, 1866, (Stats. 1865-6, 718), sec. 4.

CHAPTER V.

The County Clerk.

SECTION 1. The County Clerk shall be elected by the people and shall hold office for two years. He shall have all the powers conferred, and shall discharge all the duties imposed upon, the county clerks of counties by the general laws of this state, and in addition thereto shall attend and act as Clerk of the Police Court, keep the dockets and registers thereof, and take charge of and safely keep all books, papers and records which may be filed or deposited in his office pertaining to the Police Court. He shall receive an annual salary of four thousand dollars.

The county clerk.—Political Code, secs. 4204-4205; Municipal Corporation Act, (Stats. 1883, 93), secs. 124-126; Act of April 1, 1897, (Stats. 1897, 452), secs. 107-108.

The county clerk is a county officer. *Kahn v. Sutro*, 114 Cal. 316.

Duty of as to collateral inheritance tax: Act of March 23, 1893, (Stats. 1893, 193).

As to authority of city and county over county officers, see Cal. Con., art. XI, sec. 8½.

Office hours: Cons. Act, (Stats. 1856, 145), sec. 8; Act of March 7, 1876, (Stats. 1875-6, 142).

Salary of: Act of May 17, 1861, (Stats. 1861, 554).

Election of: Act of April 2, 1866, (Stats. 1865-6, 718), sec. 5.

Duties of: Act of February 2, 1872, (Stats. 1871-2, 58).

Deputies of: Act of February 5, 1872, (Stats. 1871-2, 76).

SEC. 2. To aid him in the discharge of his official duties, the County Clerk may appoint a chief registry clerk, who shall receive an annual salary of twenty-four hundred dollars; a cashier, who shall receive an annual

salary of eighteen hundred dollars; twelve court-room clerks for the Superior Court who shall each receive an annual salary of fifteen hundred dollars; five register clerks, who shall each receive an annual salary of eighteen hundred dollars; ten assistant register clerks, who shall each receive an annual salary of fifteen hundred dollars; sixteen copyists, who shall each receive an annual salary of twelve hundred dollars; and four clerks for the Police Court, who shall each receive an annual salary of fifteen hundred dollars.

SEC. 3. For copies of papers furnished and certified by him, he shall charge not more than eight cents for each one hundred words. For certifying copies, which are not prepared by him, he shall be entitled to charge twenty-five cents, and also forty cents an hour for the time exceeding one hour necessarily occupied in comparing such copies. He must certify all papers presented to him which are copies of any document, paper or record, or portions thereof, in his custody.

CHAPTER VI.

The Sheriff.

SECTION 1. The Sheriff shall be elected by the people, and he shall hold office for two years. He shall receive an annual salary of eight thousand dollars, which shall be in full compensation for all official services required of him by law; but said salary shall be exclusive of the compensation received by him from the state for the delivery of prisoners to the state prisons, and insane persons to the state asylums for the insane. He shall

have all the powers conferred, and shall discharge all the duties imposed upon, the sheriffs of counties by the general laws of this state.

The sheriff.—Political Code, secs. 4175-4193; Municipal Corporation Act, (Stats. 1883, 93), sec. 130; Act of April 1, 1897, (Stats. 1897, 452), secs. 88-106.

The sheriff is a county officer. *Kahn v. Sutro*, 114 Cal. 316.

As to the authority of the city and county over county officers, see Cal. Cons., art. XI, sec. 8½.

Office hours: Cons. Act, (Stats. 1856, 145), sec. 8.

“Elisor”: Cons. Act, (Stats. 1856, 145), sec. 9; Act of March 16, 1872, (Stats. 1871-2, 403).

Salary of: Act of May 17, 1861, (Stats. 1861, 554).

Deputies of: Act of May 17, 1861, (Stats. 1861, 554); Act of April 4, 1864, (Stats. 1863-4, 474); Act of March 20, 1868, (Stats. 1867-8, 220).

To be officer of Justices' Court: Act of March 26, 1866, (Stats. 1865-6, 423), secs. 8-9.

Election of: Act of April 2, 1866, (Stats. 1865-6, 718), sec. 5.

Advertising by: Act of March 24, 1868, (Stats. 1867-8, 267).

Allowed wagon, etc.: Act of March 9, 1870, (Stats. 1869-70), 221.

Prior to the passage of the County Government Act, the common-law rule, that a sheriff who had begun the execution of a writ must complete it, prevailed in this state, but was changed by that act. *Wood v. Lowden*, 117 Cal. 232.

SEC. 2. He may appoint the following deputies and employees, who shall each respectively receive the following annual salaries: One under sheriff, twenty-four hundred dollars; one attorney, eighteen hundred dollars; one chief bookkeeper, eighteen hundred dollars; two assistant bookkeepers, fifteen hundred dollars; ten office deputies, fifteen hundred dollars; fourteen bailiffs, twelve hundred dollars; one chief jailer at Branch Jail

Number One, eighteen hundred dollars; ten jailers at Branch Jail Number One, twelve hundred dollars; one superintendent of Branch Jails Numbers Two and Three, eighteen hundred dollars; sixteen guards at Branch Jail Number Two, six hundred dollars; one matron at Branch Jail Number Three, nine hundred dollars; six guards at Branch Jail Number Three, six hundred dollars; one commissary to act for all jails, fifteen hundred dollars; one driver of van, nine hundred dollars; and one bookkeeper for all said branch jails, fifteen hundred dollars.

SEC. 3. The Sheriff may designate the services to be performed by his deputies.

CHAPTER VII.

The Justices' Courts.

SECTION 1. The Justices of the Peace shall each receive an annual salary of twenty-four hundred dollars, except the Presiding Justice, who shall receive an annual salary of twenty-seven hundred dollars. They shall appoint a chief clerk who shall hold office for two years, and receive an annual salary of twenty-four hundred dollars. The chief clerk may appoint five deputies, each of whom shall receive an annual salary of twelve hundred dollars.

The justices' courts.—Code of Civil Procedure, secs. 85-115, 832, 926; Act of April 1, 1897, (Stats. 1897, 452), sec. 155; County Government Act, (Stats. 1893, 346), sec. 58; Act of March 26, 1866, (Stats. 1865-6, 423).

Section 1 of article VI of the Constitution vests in justices of the peace a part of the judicial power of the state, and makes

them a part of the judicial department of the state. *People v. Ransom*, 58 Cal. 558; *Kahn v. Sutro*, 114 Cal. 316.

Justices of the peace are not county officers. *Kahn v. Sutro*, 114 Cal. 316.

A law fixing the *term* of justices of the peace need not be uniform throughout the state; but laws "regulating the *jurisdiction and duties* of justices of the peace" must be general in their nature. Cal. Con., art. IV, sec. 25; *Kahn v. Sutro*, 114 Cal. 316.

Justices of the peace are judicial officers. *People v. Ransom*, 58 Cal. 558; *McGrew v. San Jose*, 55 Cal. 611.

Section 103 of the Code of Civil Procedure, relating to the election of justices of the peace, is a general and not a special law, and is constitutional. *Bailey v. Supervisors*, 66 Cal. 10; *Bishop v. Oakland*, 58 Cal. 572; *People v. Ransom*, 58 Cal. 558; *McGrew v. San Jose*, 55 Cal. 611.

The act conferring criminal jurisdiction on justices of the peace is constitutional. *People v. Fowler*, 9 Cal. 85.

Section 11 of article VI of the Constitution provides that the Legislature "shall fix by *law* the powers, duties, and responsibilities of justices of the peace." Under this provision a freeholders' charter cannot fix the powers, duties, or responsibilities of justices of the peace. *People v. Toal*, 85 Cal. 333; *Milner v. Reibenstein*, 85 Cal. 593; *People v. Sands*, 102 Cal. 12; *Ex parte Reilly*, 85 Cal. 632; *Ex parte Giambonini*, 117 Cal. 573.

Section 86 of the Code of Civil Procedure provides that the supervisors "shall appoint a justices' clerk, on the written nomination and recommendation of said justices, or a majority of them," while the charter provides that the justices themselves shall make the appointment. It is thought that the provision of the code is paramount to that of the charter, since the charter can not provide for the *powers* of the justices. The same may be said as to the provision of the charter that the clerk shall appoint *five* deputies, while the code provides for only *three*.

As to the power of justices of the peace to hold police court, see Act of December 9, 1865, (Stats. 1865-6, 1).

As to the election of justices of the peace, see Act of April 2, 1866, (Stats. 1865-6, 718).

As to the power of justices of the peace in criminal cases, see Act of April 2, 1870, (Stats. 1869-70, 674).

CHAPTER VIII.

The Police Court.

SECTION 1. There is hereby created and established in and for the City and County of San Francisco a court to be known as the Police Court of the City and County of San Francisco. Said court shall consist of four judges, who shall be elected by the people and hold office for four years. They shall each receive an annual salary of thirty-six hundred dollars. They shall be electors of the city and county at the time of their election, and must have been such for at least five years next preceding such time. No person shall be eligible to the office of judge of the Police Court who is not at the time of his election qualified to practice in all the courts of this state, and who has not been so qualified for at least five years next preceding his election. The court shall be divided into departments known as Department Number One, Department Number Two, Department Number Three, and Department Number Four. The judges of such court may hold as many sessions of the court at the same time as there are judges thereof. The judges who shall be elected at the first election under this charter shall so classify themselves by lot that two of them shall go out of office in two years and two of them in four years.

They shall choose from their number a presiding judge who shall serve for one year. The presiding judge shall assign the judges to their respective departments; but any of the judges may preside in any of the departments in the absence or inability of the judge regularly assigned thereto.

The judgments, orders and proceedings of any session of the court held by any one or more of the judges shall be equally effectual as if all the judges had presided at such session.

The police court.—Act of March 5, 1889, (Stats. 1889, 62); Act of February 23, 1893, (Stats. 1893, 9); Code of Civil Procedure, secs. 929-933; Act of February 13, 1872, (Stats. 1871-2, 84); Political Code, secs. 4424-4432; Act of January 27, 1864, (Stats. 1863-4, 30); Cons. Act, (Stats. 1856, 145), secs. 16-22; Act of April 18, 1857, (Stats. 1857, 209), sec. 5; Act of April 27, 1863, (Stats. 1863, 739).

Jurisdiction of: Act of January 27, 1864, (Stats. 1863-4, 30); Political Code, sec. 2544.

Fines in: Act of January 27, 1864, (Stats. 1863-4, 30); Act of March 17, 1876, (Stats. 1875-6, 325).

Clerk of: Cons. Act, (Stats. 1845, 145), sec. 19; Act of May 17, 1861, (Stats. 1861, 554).

The act of March 5, 1889, (Stats. 1889, 62), was held constitutional in *Ex parte Lloyd*, 78 Cal. 421.

The act of March 7, 1881, (Stats. 1881, 75), was held constitutional in *Ex parte Jordan*, 62 Cal. 464.

The act of February 13, 1872, (Stats. 1871-2, 84), was not repealed by the Political Code, as sections 4424-4432 of that code do not affect existing municipalities, such as the City and County of San Francisco. *Ex parte Simpson*, 47 Cal. 127.

As to the authority of the charter to provide for the constitution, regulation, government, and jurisdiction of police courts, see Cal. Con., art. XI, sec. 8½.

Prior to this new section of the Constitution it was held that a freeholders' charter could not establish an inferior court such as the police court. *People v. Toal*, 85 Cal. 333; *Milner v. Reibenstein*, 85 Cal. 593; *People v. Sands*, 102 Cal. 12; *Ex parte Reilly*, 85 Cal. 632; *Ex parte Giambonini*, 117 Cal. 573.

SEC. 2. The Police Court of the City and County of San Francisco shall have:

First—Exclusive jurisdiction of all prosecutions for the violation of ordinances of the Board of Supervisors.

Second—Concurrent jurisdiction with the Superior Court of all other misdemeanors and of the examination of all felonies committed in the city and county.

Third—Said court, or any judge thereof, shall have the same powers in all criminal actions, cases, examinations and proceedings as are now or may hereafter be conferred by law upon justices of the peace.

Jurisdiction of police courts.—By section 8½ of Article XI of the Constitution, freeholders' charters are given authority to provide for the jurisdiction of police courts. The jurisdiction was formerly established by sections 4426-4427 of the Political Code, the provisions of which were taken from the Act of March 10, 1866, (Stats. 1865-6, 193). See also Code of Civil Procedure, sec. 121. The provisions of the charter are taken from the Act of February 23, 1893, (Stats. 1893, 9).

Subdivision 1 of this section of the charter is the same as subdivision 1 of section 2 of the act of February 23, 1893. *Santa Barbara v. Stearns*, 51 Cal. 499.

Subdivision 2 of this section gives the police court concurrent jurisdiction with the superior court of all other misdemeanors, while subdivision 2 of section 2 of the act of 1893 limits the jurisdiction to misdemeanors "punishable by fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or by both fine and imprisonment." This seems to be authorized by section 8½ of article XI of the Constitution, since the superior courts are only given jurisdiction in "cases of misdemeanors not otherwise provided for." Cal. Con., art. VI, sec. 5; Code of Civil Procedure, sec. 76, subdiv. 5; *Ex parte Wallingford*, 60 Cal. 103.

The expression "examination of felonies" includes the examination of misdemeanors. *People v. Crespi*, 115 Cal. 50. This provision is the same as subdivision 3 of section 2 of the act of 1893.

Subdivision 3 of this section transfers all criminal jurisdiction of justices of the peace to the police court. The provision is the same as subdivision 4 of section 2 of the act of 1893. This

jurisdiction is defined by section 115 of the Code of Civil Procedure, and is the same as that given police courts by section 4426, subdivs. 1-2 of the Political Code.

It is not clear whether or not this jurisdiction is intended to be exclusive in the police courts, but under the decision in *In re Carrillo*, 66 Cal. 3, it would seem to be concurrent. Moreover, as the charter could not create a justices' court, it could not take away the jurisdiction given to justices' courts by the general laws.

The superior courts have no jurisdiction of cases of petit larceny, or such other misdemeanors as have been committed by the Legislature to the justices' court. *Ex parte Wallingford*, 60 Cal. 103.

So the superior court has no jurisdiction of a misdemeanor punishable by fine not exceeding five hundred dollars or imprisonment not exceeding six months, or both, since section 115 of the Code of Civil Procedure confers such jurisdiction upon justices of the peace. *Gofford v. Bush*, 60 Cal. 149.

It would seem that section 115 of the Code of Civil Procedure does not apply to cities having police courts established pursuant to section 4426 of the Political Code. *Ex parte Carrillo*, 66 Cal. 3.

Police judges are magistrates. *People v. Crespi*, 115 Cal. 50.

SEC. 3. Proceedings in said court shall be conducted in accordance with the laws of this state regulating proceedings in justices' and police courts and appeals to the Superior Court; and said court or any judge thereof shall have the same power in all criminal actions, cases and proceedings as are now or may be hereafter conferred by the general law of this state upon justices of the peace; provided, that:

First—No case shall be dismissed or fine imposed until the testimony for the prosecution shall be taken.

Second—Any defendant who neglects to file his statement on appeal within ten days after sentence shall lose his right to appeal, unless good cause for the delay be shown by affidavit. Press of business on the part of de-

defendant's attorney shall not be deemed good cause for delay. Unless the District Attorney shall file amendments to the proposed statement on appeal within five days after the same shall have been filed and served, the proposed statement on appeal shall be the statement on appeal. The judge before whom the case was tried shall settle the statement on appeal within five days after the District Attorney shall have filed his amendments to the proposed statement.

Third—Any person who shall solicit or importune any of said judges, either before or after judgment, to dismiss a case, or mitigate a sentence, unless the same be done in open court, shall be guilty of a contempt of court.

Fourth—A complaint may be demurred to on the ground that it does not set forth the offense charged with such particularities of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of, and the complaint may be amended by permission of the court after a demurrer is sustained.

Fifth—A defendant in custody shall have the right to be tried before a defendant on bail, and felonies shall be heard before misdemeanors.

Sixth—The judges of said court shall try all cases as speedily as possible, and must refuse continuances after the first calling of a case for trial except upon affidavit showing good cause therefor.

Seventh—Other than lawfully authorized surety companies, no person shall be eligible to be a bondsman for any defendant on trial in the Police Court, or on appeal from a judgment therein, except he take an oath that the

property specified in the undertaking is in the City and County of San Francisco, and that he is worth the amount specified exclusive of property exempt from execution, and exclusive of all demands for which he may become liable by reason of the forfeiture of any appeal or bail bonds for which he is surety.

Proceedings in police courts.—Act of February 23, 1893, (Stats. 1893, 9); Political Code, secs. 4430-4432; Penal Code, secs. 858-883; 1426-1470; Code of Civil Procedure, secs. 929-933.

Subdivision 1.—See Penal Code, secs. 1382-1389.

Subdivision 2.—See Penal Code, sec. 1468.

Subdivision 3.—Penal Code, secs. 166, 657; Code of Civil Procedure, secs. 177-178, 1209-1222.

This does not refer to criminal contempts; and contempts within the meaning of this section are only punishable by fine not exceeding five hundred dollars or five days' imprisonment, or both. Code of Civil Procedure, sec. 1218.

Subdivision 4.—Penal Code, secs. 1002-1012, 950-952. Amendment: Penal Code, sec. 1008.

Subdivision 5.—See Penal Code, sec. 1048.

Subdivision 7.—Bondsmen: Penal Code, sec. 1279. Surety companies: Code of Civil Procedure, sec. 1056.

SEC. 4. The District Attorney, either in person or by his assistants, must be present at the sessions of the court and attend to the prosecution of all cases coming before it, and make out all complaints and warrants for the arrest of persons charged with crime to be prosecuted in said court.

These duties formerly devolved upon the prosecuting attorney and his assistants. Act of February 23, 1893, (Stats. 1893, 9), sec. 5.

It is also made the duty of the warrant and bond clerk to draw complaints. Section 5 of this chapter.

As to the authority of the charter to prescribe the duties of the district attorney, see Cal. Con., art XI, sec. 8½.

SEC. 5. The District Attorney shall appoint a Warrant and Bond Clerk who shall receive a salary of twenty-four hundred dollars a year, and three assistant warrant and bond clerks, each of whom shall receive a salary of fifteen hundred dollars a year. No person shall be appointed a Warrant and Bond Clerk who is not at the time of his appointment qualified to practice in all the courts of this state. The Warrant and Bond Clerk shall keep his office open continuously night and day for the transaction of business; shall draw complaints in actions in the Police Court, and approve the same with his written signature; shall have the custody of all bail bonds and appeal bonds taken in the Police Court; shall examine the sufficiency of every bail bond and appeal bond taken in the Police Court and make a return thereon, within forty-eight hours after such bond shall have come into his possession, in the following form:

“I,, Warrant and Bond Clerk of the City and County of San Francisco, have examined the within bond and find it good in law. I have examined the records of the City and County of San Francisco, and find the property, its owners and incumbrances herein described, to be correct according to said records. (Signed, Warrant and Bond Clerk.)”

The Warrant and Bond Clerk shall endorse upon the bond the time when it was issued by him, or when it came into his possession. He may issue bail bonds and appeal bonds when the liability thereof does not exceed two thousand dollars, and order the discharge from cus-

tody of the persons for whom the bonds are issued; and he may take cash bail to the extent in any one case of one thousand dollars. He must account for and pay to the Treasurer all moneys received as bail in the manner that the County Clerk is required by law to account for and pay moneys received as fees. No clerk of the Police Court shall ever take bail or order the release of any one charged with an offense.

Bail bonds.—Penal Code, secs. 1268-1317.

How approved: Penal Code, sec. 1269.

Excessive bail shall not be required: Cal. Cons., art. I, sec. 6; U. S. Con., Amendment 8.

Appeal bonds: Penal Code, secs. 1291-1292.

SEC. 6. In the matter of fixing bail and ordering the release of prisoners the Warrant and Bond Clerk shall be subject to the judges of the Police Court, and any violation of a valid order of any of said judges shall be a contempt of court.

SEC. 7. For any failure to keep the office of the Warrant and Bond Clerk open continuously he shall be immediately removed from office by the District Attorney or by the Mayor.

SEC. 8. It shall be a misdemeanor for any person other than a judge of some court in the city and county, or other than said Warrant and Bond Clerk, to receive bail money for defendants or to order their discharge.

SEC. 9. All demurrers to complaints, notices of motion, statements and bills of exception on appeal to the Superior Court, must be served upon the Assistant Dis-

trict Attorney acting in the department of the court in which the case is set for hearing, or heard or tried.

Service of papers.—Notice of appeal: Penal Code, secs. 1240-1241.

Demurrer to be filed: Penal Code, sec. 1005.

Bill of exceptions: Penal Code, sec. 1171; Page v. Superior Court, XVI Cal. Dec. 111.

SEC. 10. The County Clerk shall be the clerk of the Police Court, and he must be present either in person or by deputy at all the sessions of the court in the departments thereof; call the daily calendar of the departments, and keep full and complete records of all cases in the court and the disposition made thereof by the court.

Clerk.—There was formerly a separate clerk for each department. Act of February 23, 1893, (Stats. 1893, 9), secs. 6, 10.

As to authority of charter to impose duties on county clerk, see Cal. Con., art. XI, sec. 8½.

SEC. 11. The police judges may appoint not more than two competent stenographers who shall attend the sessions of the courts and take notes of all preliminary examinations made at the sessions, and transcribe into type-written long hand all evidence taken by either of them where the parties charged have been held for trial, and deliver one copy of the same to the clerk and one copy to the District Attorney. Each of such stenographers shall be paid for all his services, including transcription and all stationery used by him, an annual salary of twenty-four hundred dollars.

Stenographer.—Act of February 23, 1893, (Stats. 1893, 9), sec. 8.

Duties of: Penal Code, secs. 1060-1061, 869, 1093, subdiv. 6; Code of Civil Procedure, sec. 269.

Paying part of fees to judge: Penal Code, sec. 94.

In general: Code of Civil Procedure, secs. 268-274.

Qualifications: Code of Civil Procedure, sec. 270.

SEC. 12. The Mayor may in writing appoint any justice of the peace to act as judge of the Police Court, or any department thereof, during the temporary absence or inability of the judge to act.

Justice of the peace to act as police judge: Political Code, sec. 4428.

SEC. 13. The Chief of Police shall cause to be made out and delivered to each of the clerks of the court at or before nine o'clock in the forenoon of each day a calendar of arrests in which the cases shall have been assigned to the departments of the court in accordance with the rules and regulations established by the police judges. The calendar shall state "the offense charged;" whether the defendant is "in custody" or "on bail;" "the amount of bail;" "whether cash or bond," and "the name of the arresting officer."

SEC. 14. The Chief of Police shall appoint one or more police officers to attend the sessions of the Police Court in each department thereof to preserve order and execute the orders of the court.

Act of February 23, 1893, (Stats. 1893, 9), sec. 9.

SEC. 15. The police judges shall adopt all necessary rules and regulations for conducting the business of the court.

SEC. 16. No attorney shall appear in said court to prosecute or defend persons charged with offenses un-

less at the time of his appearance he be qualified to practice law in all the courts of this state.

Act of February 23, 1893, (Stats. 1893, 9), sec. 4.

SEC. 17. The term of office of the police judges elected at the general election held in the year eighteen hundred and ninety-eight shall terminate at the hour of noon of the first Monday after the first day of January in the year nineteen hundred, and they shall at said time be succeeded by the police judges provided for in this chapter; and all proceedings pending in said court shall be transferred to the Police Court created under this charter, and the judges elected as herein provided shall have and obtain jurisdiction of the same.

See Charter, art. XI, ch. II.

CHAPTER IX.

The San Francisco Law Library.

SECTION 1. The Supervisors must provide, fit up and furnish, with fuel, lights, stationery, and all necessary conveniences, attendants and care, rooms convenient and accessible to the judges and officers of the courts and of the municipal government sufficient for the use and accommodation of the San Francisco Law Library, established under an act of the Legislature of this state entitled: "An act to provide for increasing the law library of the corporation known as the San Francisco Law Library, and to secure the use of the same to the courts held at San Francisco, the bar, the city and county government and the people of the City and

County of San Francisco," approved March 9th, 1870. The Supervisors must appropriate, allow, and order paid, out of the proper fund such sums as may be necessary for the purposes aforesaid; and all sums lawfully appropriated and expended pursuant hereto shall be paid out of the proper fund on demands duly audited, in the mode prescribed by this charter for auditing other demands upon the treasury. The County Clerk must pay monthly to the treasurer of the San Francisco Law Library such moneys as he shall collect under the Act referred to for the benefit of said law library.

San Francisco Law Library.—Act of March 9, 1870, (Stats. 1869-70, 235); Act of April 12, 1880, (Stats. 1880, 40; *Ban. ed.* 194).

ARTICLE VI.

DEPARTMENT OF PUBLIC WORKS.

CHAPTER I.

The Board of Public Works.

SECTION 1. There shall be a Department of Public Works under the management of three commissioners who shall constitute the Board of Public Works, and who shall give all their time during official business hours to the duties of their office. The members of said board shall be appointed by the Mayor. Of those first appointed he shall appoint one for one year, one for two years, and one for three years. Each year thereafter he shall appoint for three years one person as the successor of the commissioner whose term of office expires in that year. All such appointments shall be so made that not more than one member shall at any one time belong to the same political party. No person shall be eligible for appointment as such commissioner unless he is, and has been for at least five years next preceding his appointment, an elector of the city and county. Each of said commissioners shall receive an annual salary of four thousand dollars.

SEC. 2. Of the commissioners first appointed under this charter, one shall be designated by the Mayor to serve as president for one year. All subsequent presidents of the board shall be elected by the members thereof for terms to be fixed by said board. The president of the board shall in each case hold office until his succes-

sor has been elected or until his membership on the board expires.

SEC. 3. The board may appoint a secretary who shall receive an annual salary of eighteen hundred dollars. The board may employ such clerks, superintendents, inspectors, engineers, surveyors, deputies, architects and workmen as shall be necessary to a proper discharge of their duties under this article, and fix their compensation; but no compensation to any of said persons shall be greater than is paid in the case of similar employments.

SEC. 4. The board shall establish all necessary rules and regulations for its government, and for the performance of its duties, and for the regulation and conduct of its officers and employees; and shall require adequate bonds from its officers and employees, except laborers, for the faithful performance of all their duties in such sums as may be fixed by the Supervisors. Said bonds shall be approved by the Mayor and shall be filed in the office of the Auditor.

SEC. 5. The board shall hold regular meetings at least once each week at a place and time to be fixed by resolution entered on its minutes. No changes in place or time of regular meetings shall be made without a resolution passed at least two weeks before the time the change is to go into effect. Such special meetings may be held as the commissioners may deem necessary after notice of the same has been posted ten hours before the time of holding any such meeting. All meetings shall be public. No business shall be transacted at an adjourned meeting except such as may have been under,

or proposed for, consideration at the meeting from which the adjournment was had. No business shall be transacted at a special meeting except that which is named in the notice of said meeting. Special meetings may be called by any member of the board. In every case where a power is exercised under this article by the board the vote thereon shall be taken by ayes and noes.

SEC. 6. The board shall keep and preserve a record of all its proceedings, and copies of all plans, specifications, reports, contracts, estimates, certificates, receipts, surveys, field notes, maps, plats, profiles, and of all papers pertaining to the transactions of the board. The secretary of the board shall keep a record of all its transactions, specifying therein the names of the commissioners present at all the meetings, and giving the ayes and noes upon all votes. The secretary shall post and publish all orders, resolutions and notices as required in this chapter or which the board shall order to be posted or published. He shall perform such other duties as may from time to time be prescribed by the board.

SEC. 7. The board shall be the successor in office and shall have all the powers and perform all the duties of the Superintendent of Streets, Highways and Squares, of the New City Hall Commissioners, and of the commissions in existence at the time this charter goes into effect for the opening, extending, widening, narrowing, straightening, closing or changing the grades of streets in the city and county.

Duties of superintendent of streets.—As to the laying out, opening, etc., of streets: Act of March 6, 1889, (Stats. 1889, 70) ; Act of March 23, 1893, (Stats. 1893, 220).

As to work upon streets: Act of March 18, 1885, (Stats. 1885, 147).

As to the planting, etc., of shade trees upon streets: Act of March 11, 1893, (Stats. 1893, 153).

As to repair of roads: Act of April 1, 1872, (Stats. 1871-2, 901).

New City Hall Commissioners.—Act of March 24, 1876, (Stats. 1875-6, 461).

Commissioners for opening, etc., of streets.—Act of March 6, 1889, (Stats. 1889, 70); Act of March 23, 1893, (Stats. 1893, 220).

SEC. 8. The board shall immediately after its organization take possession and have the custody and control of all maps, plats, surveys, field notes, records, plans, specifications, reports, contracts, models, machinery, instruments, tools, appliances, contract rights, privileges, books, documents and archives and other property belonging to the city and county, or which may be of value and importance to the city and county, and heretofore kept by or in the offices of the City and County Surveyor, the Superintendent of Public Streets, Highways and Squares, the Board of New City Hall Commissioners, and all commissions in existence at the time this charter goes into effect for the opening, extending, widening, narrowing, straightening, closing or changing the grades of streets, and all other business and works pertaining to any of said offices or commissions.

SEC. 9. The Board of Public Works shall have charge, superintendence and control, under such ordinances as may from time to time be adopted by the Supervisors:

1. Of all public ways, streets, avenues, lanes, alleys, places, courts, roads, highways and boulevards now opened or which may hereafter be opened in the city and county; of the manner of their use; and of all work done upon, over or under the same; and herein particularly the board shall have exclusive authority to prescribe rules and grant permits, in conformity with the ordinances of the Supervisors, for the moving of buildings through the streets thereof, and the building or placing of cellars or vaults under the streets or sidewalks, and of temporary fences enclosing areas upon the sidewalks; the laying down and construction of railroad tracks in the streets; the erection of telegraph and telephone poles, and poles for electric lighting, and the laying under the surface of the streets or sidewalks of telegraph or telephone wires, and wires for electric lighting and power; the construction of drains and sewers; the laying down and taking up of gas, steam and water pipes, pneumatic or other tubes or pipes, and sewers and drains, and determining the location thereof; the using of the street or any portion thereof for the deposit of building material in front of a building during its construction or repair, or for any purpose other than such as ordinarily and properly belongs to the public from the dedication thereof to public use; and without such permission in writing from said board no person shall do any of the acts in this section enumerated; but nothing in this section shall be so construed as to give said board the power to grant permits for or allow the permanent encroachment upon any sidewalk of any structure;

2. Of all sewers, drains and cesspools, and of the

work pertaining thereto or to the drainage of the city and county;

3. Of the cleaning and sprinkling of all public streets, avenues, alleys, places, courts, roads, highways and boulevards, and the lighting of the same and the lighting of the parks, squares and other public places and public buildings;

4. Of the cleaning of all the public buildings of the city and county and of the appointment of such janitors and employees as are needed for such purpose;

5. Of the supervision of any and all building construction in the city and county;

6. Of the construction of any and all public buildings and structures, under plans duly approved by the various departments, including all school houses and fire-department buildings, and the repair and maintenance of any and all buildings and structures owned by the city and county;

7. Of any and all wires and conduits, the collection and disposal of street refuse, garbage and sewage, and the designing, construction and maintenance of the sewerage and drainage systems of the city and county;

8. Of any and all public utilities owned, controlled or operated by the city and county, or which may hereafter be so owned, controlled or operated.

9. When at any time any person, company or corporation desires to have opened or torn up the roadway of any street, lane, alley, place or court in the city and county for any purpose, a written application shall be made to the Board of Public Works for permission to do so. The board shall thereupon make an estimate of the

expense of opening or tearing up such street, lane, alley, place or court and of restoring the same to as good a condition as it was in before said opening or tearing up. Such person, company or corporation must thereupon deposit the amount of such estimate with the Board of Public Works which shall thereupon pay the same into the General Fund.

The board shall thereupon proceed to open or tear up said street, lane, alley, place or court as in said application requested, and shall at the proper time restore such street, lane, alley, place or court to as good a condition as it was in before said opening or tearing up. Contracts for the doing of such work by the board may be let by it in the manner provided in this chapter, or the work may, at the option of the board, be done by days' labor.

If the expense of such work has been more than the aforesaid estimate, the person, company or corporation shall be indebted to the city and county for such balance; and the same shall constitute a lien upon the property of such person, company or corporation. Said lien shall remain in force until such balance has been paid, or until the lien shall be legally discharged. Said lien may be enforced by suit brought by the city and county in accordance with the provisions of the Code of Civil Procedure of the State of California. If the expense of such work has been less than the aforesaid estimate, then the surplus shall constitute a claim in favor of such person, company or corporation, against the city and county, and as such shall be presented, approved and paid as other claims.

SEC. 10. All examinations, plans and estimates required by the Supervisors in connection with any public improvements or utilities, shall be made by the Board of Public Works and it shall, when requested to do so, furnish information and data for the use of the Supervisors.

SEC. 11. Said board shall appoint a civil engineer of not less than five years' practical experience as such, who shall be designated the City Engineer. He shall hold his office at the pleasure of the board.

He shall perform all the civil engineering and surveying required in the prosecution of the public works and improvements done under the direction and supervision of said board, and shall certify to the progress and completion of the same, and do such other surveying or other work as he may be directed to do by said board or by the Supervisors. He shall possess the same power in the city and county in making surveys, plats and certificates as is or may from time to time be given by law to city engineers and to county surveyors, and his official acts and all plats, surveys and certificates made by him shall have the same validity and be of the same force and effect as are or may be given by law to those of city engineers and county surveyors. No street assessment shall be valid without his certificate as to the quantities and unless it be to the effect that the work has been done to the official lines, elevations and grades.

Civil engineer.—As to the power of county surveyor, see: Political Code, secs. 3445, 3634, 3970, 4268-4275; Act of April 1, 1897, (Stats. 1897, 452), secs. 135-141; Act of March 13, 1883, (Stats. 1883, 93), sec. 137.

Certificate as to street work: O'Connor v. Hooper, 102 Cal. 528; Stockton v. Skinner, 53 Cal. 85.

The certificate can not be made by a mere clerk of the engineer. *Rauer v. Lowe*, 107 Cal. 229; *Warren v. Ferguson*, 108 Cal. 535.

Certificate *prima facie* evidence: note to sec. 15 of ch. II. of this article.

As to the recording of the certificate, see: Charter, art. VI., ch. II., sec. 12.

SEC. 12. He shall serve the board exclusively and shall not be engaged in any other business while he is in its service. He shall receive no compensation except his salary. The board shall by resolution establish fees and charges for the services to be performed by the City Engineer for persons, companies and corporations, and may from time to time change and adjust the same. Said engineer shall require such fees or charges to be paid in advance for any official act or service demanded of him, and such moneys thus paid shall be paid to the Treasurer and credited by him to such fund or funds as said board may direct.

SEC. 13. The board shall appoint the necessary heads of departments under its charge. Each such head shall have the sole executive control in his own department, subject to the rules and regulations prescribed by the board.

SEC. 14. All public work authorized by the Supervisors to be done under the supervision of the Board of Public Works shall, unless otherwise determined by the Board of Public Works, be done under written contract, except in case of urgent necessity as hereinafter provided; and except as otherwise specifically provided in this charter, the following proceedings shall be taken in

all cases in the matter of the letting of contracts by said board. Before the award of any contract for doing any work authorized by this article, the board shall cause notice to be posted conspicuously in its office for not less than five days, and published for the same time, inviting sealed proposals for the work contemplated; except, however, that when any repairs or improvement, not exceeding an estimated cost of five hundred dollars, shall be deemed of urgent necessity by the board, such repairs or improvement may be made by the board under written contract or otherwise, without advertising for sealed proposals.

Resolution inviting proposals.—An order of the board authorizing the clerk to advertise for proposals is sufficient, although it does not mention sealed proposals, nor specify the time and place of giving notice. *Himmelman v. Byrne*, 41 Cal. 500.

A resolution authorizing the clerk to advertise for proposals is sufficient authority to post notices in the office of the superintendent of streets. *Shepard v. Colton*, 44 Cal. 628.

As to the necessity of an order authorizing the clerk to advertise for proposals, see: *Meuser v. Risdon*, 36 Cal. 239; *Donnelly v. Tillman*, 47 Cal. 40; *Donnelly v. Marks*, 47 Cal. 187.

SEC. 15. Said advertisement and notice shall invite sealed proposals to be delivered at a certain day and hour at the office of the board for furnishing the materials for the proposed work, or for doing said work, or for both, as may be deemed best by the board, and shall contain a general description of the work to be done, the materials to be furnished, the time within which the work is to be commenced, and when to be completed, and the amount of bond to be given for the faithful performance of the contract, and shall refer to plans and speci-

fications on file in the office of the board for full details and description of said work and materials.

Notices for sealed proposals.—The erroneous use of the word “regraded,” instead of “graded,” in the notice inviting sealed proposals, does not vitiate the notice. *Brady v. Feisel*, 53 Cal. 49.

As to the time for which the notice must be posted, see: *Brooks v. Satterlee*, 49 Cal. 289; *Himmelman v. Cahn*, 49 Cal. 285; *Alameda Macadamizing Co. v. Huff*, 57 Cal. 331; *Hewes v. Reis*, 40 Cal. 255; sec. 26, ch. 11, of this article.

If the notice is not posted for the required time, all the subsequent proceedings are void. *Hewes v. Reis*, 40 Cal. 255.

The notices must refer to the diagram and specifications of the proposed work. *Stockton v. Clark*, 53 Cal. 82; *Stockton v. Skinner*, 53 Cal. 85.

SEC. 16. All proposals shall be made upon printed forms to be prepared by the board, and furnished gratuitously upon application, with a form for the affidavit hereinafter provided for printing thereon. Each bid shall have thereon the affidavit of the bidder that such bid is genuine, and not collusive or sham; that he has not colluded, conspired, connived or agreed, directly or indirectly, with any other bidder or person to put in a sham bid, or that such other person shall refrain from bidding; and has not in any manner sought by collusion to secure any advantage against the city and county, or any person interested in said improvement, for himself or any other person. All bids shall be clearly and distinctly written, without any erasure or interlineation, and if any bid shall have an erasure or interlineation it shall not be received or considered by the board. Any contract made in violation of any of the foregoing provisions, and in the case of improvement of streets, any

assessment for the work done under such contract, shall be absolutely void.

All proposals offered shall be accompanied by a check, certified by a responsible bank, payable to the order of the Clerk of the Supervisors, for an amount not less than ten per centum of the aggregate of the proposal, and no proposal shall be considered unless accompanied by such check.

No person, corporation or firm shall be allowed to make, file, or be interested in, more than one bid for the same work. If on the opening of said bids more than one bid appear in which the same person, corporation or firm is interested, all such bids shall be rejected.

Bids.—If an ordinance requires that bidders shall bid on each block separately, a bid to grade the entire street at so much per cubic yard is an error which enables the owner to defeat the collection of the assessment. *Stockton v. Creanor*, 45 Cal. 643.

Where the bidder has made a private contract with some of the owners of the land to be assessed to do the work at a specified rate in lieu of the rate to be awarded in the contract, he is guilty of fraud upon the other owners, and the assessment is void. *Brady v. Bartlett*, 56 Cal. 350.

A contract let without competitive bidding is absolutely void. *Santa Cruz R. P. Co. v. Broderick*, 113 Cal. 628.

Objections to the bids must be made by appeal to the supervisors. *Nolan v. Reese*, 32 Cal. 484; *Himmelmann v. Hoadley*, 44 Cal. 213.

A bid which is clearly collusive and fraudulent may be rejected. *Rice v. Haywards*, 107 Cal. 398.

SEC. 17. On the day and at the hour specified in said notice inviting sealed proposals the board shall assemble and remain in session for at least one hour, and all bids shall be delivered to the board while it is so in session, and within the hour named in the advertisement.

No bid not so delivered to the board shall be considered. Each bid as it shall be received shall be numbered and marked "Filed" by the president and authenticated by his signature. At the expiration of the hour stated in the advertisement within which the bids will be received, the board shall, in open session, open, examine and publicly declare the same, and an abstract of each bid shall be recorded in the minutes of the board by the secretary. Before adjourning, the board shall compare the bids with the record made by the secretary, and shall thereupon, at said time, or at such other time, not exceeding twenty days thereafter, as the board may adjourn to, award the contract to the lowest bidder, except as otherwise herein provided. Notice of such award shall forthwith be posted for five days by the secretary of the board in some conspicuous place in the office of the board, and be published for the same period of time.

The board may reject any and all bids, and must reject the bid of any party who has been delinquent or unfaithful in any former contract with the city and county, and all bids other than the lowest regular bid; and on accepting said lowest bid, shall thereupon return to the proper parties the checks corresponding to the bids so rejected. If all the bids are rejected, the board shall return all the checks to the proper parties and again invite sealed proposals as in the first instance.

The check accompanying the accepted bid shall be held by the secretary of the board until the contract for doing said work, as hereinafter provided, has been entered into, whereupon said certified check shall be returned to said bidder.

If said bidder fails or refuses to enter into the con-

tract to do said work, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be forfeited to the city and county, and shall be collected and paid into the General Fund. Neither the Board of Public Works nor the Supervisors shall have power to relieve from or remit such forfeiture.

The award.—A committee of the board cannot award the contract. *Stockton v. Creanor*, 45 Cal. 643.

If the board does not make an order for the publication of the award of the contract, all the proceedings subsequent to the award are void. *Reis v. Graff*, 51 Cal. 86; *Donnelly v. Marks*, 47 Cal. 187; *Donnelly v. Tillman*, 47 Cal. 40; *Shepard v. Colton*, 44 Cal. 628; *Himmelmänn v. Townsend*, 49 Cal. 150; *Himmelmänn v. Satterlee*, 49 Cal. 387.

As to the form of the resolution of award, see *Dougherty v. Hitchcock*, 35 Cal. 512.

The clerk of the board cannot publish the notice of the award without an order of the board. *Himmelmänn v. Satterlee*, 49 Cal. 387; *Donnelly v. Tillman*, 47 Cal. 40; *Donnelly v. Marks*, 47 Cal. 187.

As to approval by the mayor, see *McDonald v. Dodge*, 97 Cal. 112.

If the bids are opened before the time stated in the notice, the award is void. *Perine C. & P. Co. v. Quackenbush*, 104 Cal. 684.

Separate contracts cannot be awarded for a single improvement. *Treanor v. Houghton*, 103 Cal. 53.

As to the right to reject all bids, see *Girvin v. Simon*, 116 Cal. 604.

Certified check.—The provision that the certified check shall be declared forfeited if the successful bidder fails to enter into the contract, contemplates a forfeiture for failure to enter into a contract based upon valid legal proceedings; and when the proceedings are illegal, the promise of the contractor is a naked offer without consideration, and he is not estopped or

bound thereby, and a deposit of money accompanying such promise is recoverable at law. *Perine C. & P. Co. v. Pasadena*, 116 Cal. 6.

SEC. 18. If at any time it shall be found that the person to whom a contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, for the purpose of preventing any other bid being made, then the contract so awarded shall be null and void, and the board shall advertise for a new contract for said work.

Fraud of contractor.—A bid which is clearly collusive and fraudulent may be rejected. *Rice v. Haywards*, 107 Cal. 398.

As to fraud of contractor in general, see sec. 16 of this chapter and sec. 6 of ch. II of this article.

SEC. 19. In the case of improvement of streets, the owners of the major part of the frontage of lots and lands upon the street whereon the work is to be done, or which are liable to be assessed for said work, or, in the case of an assessment district, the owners of a major part of the superficial area embraced in such district, or their agents, shall not be required to present sealed proposals, but may, upon making oath that they are such owners, or the agents of such owners, within ten days after the first posting of notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded. Should such owners not enter into a written contract therefor within said ten days, or should they enter into such contract and fail to commence the work within the time stated therein, which time shall not be less than ten nor more than twenty days from the time

of the execution of such contract, the board shall enter into a contract with the original bidder to whom the contract was awarded at the price specified in his bid. If the original bidder shall fail or refuse for fifteen days after the first posting of notice of the award to enter into the contract, the board shall again advertise for proposals as in the first instance.

Contract by owners.—"The owners of the major part of the frontage," in cases where a small street terminates in a principal street, means the owners of the major part of the frontage on the principal street. *Cochran v. Collins*, 29 Cal. 129.

When the superintendent of streets has entered into a contract with the owners, he cannot be compelled by mandamus to enter into a contract for the work with the contractor to whom the contract was awarded. *Fairchild v. Wall*, 93 Cal. 401.

If one of the owners has a secret agreement with the contractor that he shall not be liable for his share of the expense, it is a fraud upon the other owners. *Rauer v. Fay*, 110 Cal. 361.

If the owners assign the contract, they are estopped to deny its validity. *Callender v. Patterson*, 66 Cal. 356.

As to the form of the contract by the owners, see *O'Connor v. Hooper*, 102 Cal. 528.

As to when the owners may enter into the contract, see *San Francisco v. Buckman*, 111 Cal. 25.

Until the expiration of the period within which the owners are allowed to enter into a contract, the superintendent cannot enter into a contract, and a contract entered into with him prior to the expiration of that time is invalid. *California Imp. Co. v. Quinehard*, 119 Cal. 87.

SEC. 20. If the owners or contractor who may have entered into any contract do not complete the same within the time limited in the contract, or within such further time as is hereinafter provided, the board may relet the unfinished portion of said work in accordance

with the provisions in this chapter prescribed for the letting of the whole.

Re-letting contract.—Contracts may be re-let if the contractor does not perform the work within the time required by the contract. *Dougherty v. Foley*, 32 Cal. 402; *Himmelman v. Oliver*, 34 Cal. 246.

The fact that the second contract is let to the same contractor does not invalidate it. *Spaulding v. North S. F. H. & R. R. Ass'n*, 87 Cal. 40.

The same course must be pursued in re-letting the contract, which is prescribed for letting the contract in the first instance. *Meuser v. Risdon*, 36 Cal. 239.

The steps necessary to obtain jurisdiction need not be repeated. *Himmelman v. Oliver*, 34 Cal. 246.

As to the time of performance, see note to sec. 21 of this chapter.

SEC. 21. All contracts shall be drawn under the supervision of the City Attorney, and shall contain detailed specifications of the work to be done, the manner in which it shall be executed, and the quality of the material to be used.

Every contract entered into by the board shall be signed by all the members thereof and by the other contracting party. All contracts shall be signed in triplicate, one of which, with the specifications and drawings, if any, of the work to be done, and the materials to be furnished, shall be filed with the Clerk of the Supervisors; one thereof, with said specifications and drawings, shall be kept in the office of the board, and the other with said specifications and drawings shall be delivered to the contractor.

At the same time with the execution of the contract the contractor shall execute to the city and county and

deliver to the secretary of the board a bond in the sum named in the notice for proposals, with two or more sufficient sureties to be approved by the board, or shall deposit with the secretary a certified check upon some solvent bank for said amount, for the faithful performance of the contract. No surety on any bond, other than lawfully authorized surety companies, shall be taken unless he shall be a payer of taxes on real property, the assessed value of which, over and above all incumbrances, is equal in amount to his liabilities on all bonds on which he may be security to the city and county; and each surety shall justify and make an affidavit (for which a form shall be printed upon said bond), signed by him, that he is assessed upon the last assessment book of the city and county in his own name for real property in an amount greater than his liability on all bonds on which he is surety to the city and county, and that the taxes on such property so assessed are not delinquent.

The contract shall specify the time within which the work shall be commenced, and when to be completed, as was specified in the notice inviting proposals therefor. Upon the recommendation of the board, the Supervisors may extend said time; but in no event shall the time for the performance of said contract be extended by the Supervisors more than ninety days beyond the time originally fixed for its completion; but, on the unanimous recommendation of the Board of Public Works, a further extension may be granted by vote of fourteen members of the Board of Supervisors. In case of failure on the part of the contractor to complete his contract within the time fixed in the contract, or within such extension of said time as is herein provided, his contract shall

be void, and the Supervisors shall not pay or allow to him any compensation for any work done by him under said contract; and, in the case of the improvement of streets, no assessment shall be made for the work done under said contract.

The contract.—The contract need not follow the precise language of the statute. *Taylor v. Palmer*, 31 Cal. 240; *Emery v. San Francisco Gas Co.*, 28 Cal. 345, 377.

The superintendent of streets in entering into the contract acts as the agent of the city. *Chambers v. Satterlee*, 40 Cal. 497; *Drew v. Smith*, 38 Cal. 325.

If the contract is entered into before the expiration of the time for publishing the notice of the award, it is void. *Burke v. Turney*, 54 Cal. 486; *Manning v. Den*, 90 Cal. 610.

The contract must be entered into within the time fixed by the statute. *Libbey v. Elsworth*, 97 Cal. 316; *Perine v. Forbush*, 97 Cal. 305; *Diggins v. Hartshorne*, 108 Cal. 154.

A provision in the contract that the contractor shall give a bond conditioned "for keeping the streets so improved in thorough repair for the term of five years from the completion of the contract." vitiates the assessment. *Brown v. Jenks*, 98 Cal. 10.

So a provision making the contract payable in gold coin is void, but it does not invalidate the contract. *Perine C. & P. Co. v. Quackenbush*, 104 Cal. 684.

A provision purporting to relieve the superintendent of streets and his sureties for any delinquency on his part is void, but does not invalidate the contract. *McDonald v. Mezes*, 107 Cal. 492; *Rauer v. Lowe*, 107 Cal. 229.

A provision that there shall be no assessment on adjoining property for improving the part of the street occupied by a street railroad, will not invalidate the contract. *Perine v. Forbush*, 97 Cal. 305.

A contract to lay a patent pavement is void, since it precludes all persons other than the owner of the patent from bidding. *Nicolson P. Co. v. Fay*, 35 Cal. 695; *Nicolson P. Co. v. Painter*,

35 Cal. 699; *Dunne v. Altschul*, 57 Cal. 472. But see *Perine C. & P. Co. v. Quackenbush*, 104 Cal. 684.

The contract must be in writing, signed by the contractor. *Schwiesau v. Mahon*, 110 Cal. 543; *Dougherty v. Hitchcock*, 35 Cal 512.

Specifications.—The specifications are part of the contract. *Taylor v. Palmer*, 31 Cal. 240; *Emery v. San Francisco Gas Co.*, 28 Cal. 345.

If the specifications require work not mentioned in the resolution of intention, it does not vitiate the assessment if such additional work is not mentioned in the contract, and it does not appear that it was done, or that any charge was made for it. *Oakland P. Co. v. Rier*, 52 Cal. 270.

If the contract does not define the work to be done, nor refer to any specifications, it is void. *Schwiesau v. Mahon*, 110 Cal. 543.

As to the sufficiency of specifications, see *King v. Lamb*, 117 Cal. 401.

The plans and specifications are not part of the resolution of intention. *Fitzhugh v. Ashworth*, 119 Cal. 393.

Variation between contract and award or resolution.—If the contract does not follow the award, it is void, and the assessment cannot be enforced. *Broek v. Luning*, 89 Cal. 316; *Dougherty v. Hitchcock*, 35 Cal. 512; *Perine v. Forbush*, 97 Cal 305.

So, if the contract does not follow the resolution of intention, it is void. *Emery v. San Francisco Gas Co.*, 28 Cal. 345; *Beaudry v. Valdez*, 32 Cal. 269; *Himmelmann v. Satterlee*, 50 Cal. 68; *Stockton v. Creanor*, 45 Cal. 643; *Stockton v. Whitmore*, 50 Cal. 554; *Partridge v. Lucas*, 99 Cal. 519; *Chambers v. Satterlee*, 40 Cal. 497; *People v. Clark*, 47 Cal. 456; *Warren v. Chandos*, 115 Cal. 382; *Nicolson P. Co. v. Fay*, 35 Cal. 695; *Dorland v. Bergson*, 78 Cal. 637.

Thus, under a resolution to macadamize, a contract can not be let for both macadamizing and curbing. *Beaudry v. Valdez*, 32 Cal. 269.

So under a resolution to macadamize and curb, a contract can

not be let for work upon the sidewalks. *Himmelman v. Satterlee*, 50 Cal. 68.

Under a resolution to improve a street or part of a street, a contract can not be let to improve only a portion of the street embraced in the resolution. *Stockton v. Whitmore*, 50 Cal. 554. But see *Emery v. San Francisco Gas Co.*, 28 Cal. 345.

Under a resolution to macadamize, a contract can not be let for rock gutterways. *Partridge v. Lucas*, 99 Cal. 519.

If, however, the contract is divisible in its nature, it will be good to the extent that it is authorized by the resolution. *Chambers v. Satterlee*, 40 Cal. 497; *Beaudry v. Valdez*, 32 Cal. 269; *Himmelman v. Satterlee*, 50 Cal. 68; *McDonald v. Mezes*, 107 Cal. 492; *Dyer v. Sealmanini*, 69 Cal. 637.

If the contract calls for less work than the resolution of intention, it is void. *Himmelman v. Satterlee*, 50 Cal. 68; *Nicolson P. Co. v. Fay*, 35 Cal. 695; *Dorland v. Bergson*, 78 Cal. 637; *Stockton v. Creanor*, 45 Cal. 643; *Partridge v. Lucas*, 99 Cal. 519.

Owner as party to contract.—The owner is not a party to a contract made by the superintendent of streets with the contractor. *Dyer v. Barstow*, 50 Cal. 652; *Hancock v. Whittemore*, 50 Cal. 522; *Emery v. Bradford*, 29 Cal. 75; *Heft v. Payne*, 97 Cal. 108.

Recording contract.—The failure of the superintendent of streets to record the contract does not affect the rights of the contractor. *Wells v. Wood*, 114 Cal. 255.

Assignability of contract.—A contract to perform work on streets is assignable. *Taylor v. Palmer*, 31 Cal. 240; *Anderson v. De Urioste*, 96 Cal. 404; *Wetmore v. San Francisco*, 44 Cal. 294; *Bernstein v. Downs*, 112 Cal. 197; *McVerry v. Boyd*, 89 Cal. 304.

Where the property owner has taken the contract to do street work, and then assigned it, he is estopped from denying its validity. *Callender v. Patterson*, 66 Cal. 356.

In such a case the owner may be sued by the assignee. *Hendrick v. Crowley*, 31 Cal. 471.

The contract may be assigned without the consent of the officers of the municipality. *Anderson v. De Urioste*, 96 Cal. 404.

The assignee takes the contract *cum onere*. *Rauer v. Fay*, 110 Cal. 361.

A debt due the owner from the original contractor cannot be set off against the assignee. *Himmelmann v. Reay*, 38 Cal. 163.

As to the assignability of the assessment, see sec. 15, ch. II of this article.

Performance.—The fact that the employees of the contractor worked ten hours a day, when the contract provided that eight hours should be a legal day's work, is immaterial. *Williams v. Savings & Loan Soc.*, 97 Cal. 122.

Time of performance.—The times within which the work is to be commenced and completed must be stated in the contract, or the contract will be invalid. *Libbey v. Elsworth*, 97 Cal. 316; *Dougherty v. Foley*, 32 Cal. 402; *Brady v. Page*, 59 Cal. 52; *Perine v. Forbush*, 97 Cal. 305; *Mappa v. Los Angeles*, 61 Cal. 309; *Palmer v. Burnham*, 120 Cal. 364; *Washburn v. Lyons*, 97 Cal. 314.

As to how and when the time is fixed, see *Buckman v. Ferguson*, 108 Cal. 33.

As to the sufficiency of statement of time, see: *Rauer v. Lowe*, 107 Cal. 229; *McDonald v. Mezes*, 107 Cal. 492.

The failure of the contractor to complete the work is not excused by the neglect of the city to furnish implements for the work as provided in the contract. *Heft v. Payne*, 97 Cal. 108.

Nor by the fact that the owners have expressly waived all objections to the failure of the contractor to complete the work in time. *Heft v. Payne*, 97 Cal. 108. But see *Bernstein v. Downs*, 112 Cal. 197.

As to the extension of the time within which the work must be done, see: *Ede v. Knight*, 93 Cal. 159; *Taylor v. Palmer*, 31 Cal. 240; *Oakland P. Co. v. Barstow*, 79 Cal. 45; *Conlin v. Seamen*, 22 Cal. 546; *Houston v. McKenna*, 22 Cal. 550; *Buckman v. Cuneo*, 103 Cal. 62.

The extension must be granted within the life of the contract.

McVerry v. Boyd, 89 Cal. 304; Dougherty v. Coffin, 69 Cal. 454; Brock v. Luning, 89 Cal. 316; Raisch v. San Francisco, 80 Cal. 1; Fanning v. Schammel, 68 Cal. 428; Turney v. Dougherty, 53 Cal. 619; Brady v. Burke, 90 Cal. 1; Beveridge v. Livingstone, 54 Cal. 54; Dougherty v. Nevada Bank, 81 Cal. 162; Kelso v. Cole, 121 Cal. 121; Mappa v. Los Angeles, 61 Cal. 309.

The action of the city council in setting aside an assessment and a warrant issued upon acceptance of the work, and in directing further work as the result of an appeal by lot-owners, does not operate as an extension of time. Heft v. Payne, 97 Cal. 108.

The failure to indorse the extension upon the contract or to record the resolution of intention till after the period fixed by the contract, does not render the extension ineffectual. McVerry v. Boyd, 89 Cal. 304; Ede v. Knight, 93 Cal. 159; Brock v. Luning, 89 Cal. 316; Buckman v. Landers, 111 Cal. 347.

The fact that the work was completed upon the faith of the invalid extension of time will not validate it. Raisch v. San Francisco, 80 Cal. 1; Dougherty v. Nevada Bank, 81 Cal. 162.

As to the form of the order extending time, see Anderson v. De Urioste, 96 Cal. 404.

Bond.—A property-owner cannot object to the assessment by reason of the omission of the superintendent of streets to approve the bond of the contractor. Miller v. Mayo, 88 Cal. 568.

As to the form of the bond, see Schwiesau v. Mahon, 110 Cal. 543.

SEC. 22. The work in this article provided for must be done under the direction and to the satisfaction of the Board of Public Works; and the materials used must be in accordance with the specifications and be to the satisfaction of said board, and all contracts provided for in this article must contain a provision to that effect, and also, that in no case, except where it is otherwise provided in this charter, will the city and county, or any department or officer thereof, be liable for any portion of

the expense, or in the case of improvement of streets, for any delinquency of persons or property assessed.

When said work shall have been completed to the satisfaction and acceptance of the board, it shall so declare by resolution, and thereupon the board shall deliver to the contractor a certificate to that effect.

Acceptance.—The provision requiring an entry of the due performance of the contract in the record of the superintendent of streets is directory only. *Brady v. Bartlett*, 56 Cal. 350.

If the contract is performed to the satisfaction of the superintendent of streets, the lot-owner cannot prove that the work was not done according to the specifications. *Emery v. Bradford*, 29 Cal. 75; *McVerry v. Kidwell*, 63 Cal. 246; *Diggins v. Hartshorne*, 108 Cal. 154; *Warren v. Riddell*, 106 Cal. 352; *Girvin v. Simon*, 116 Cal. 604.

In such a case the only remedy is by appeal to the board of supervisors. *Jennings v. Le Breton*, 80 Cal. 8; *Emery v. Bradford*, 29 Cal. 75; *Cochran v. Collins*, 29 Cal. 129; *Shepard v. McNeil*, 38 Cal. 72; *Diggins v. Hartshorne*, 108 Cal. 154; *Smith v. Hazard*, 110 Cal. 145; *Warren v. Riddell*, 106 Cal. 352; *Girvin v. Simon*, 116 Cal. 604; *Fanning v. Leviston*, 93 Cal. 186.

The assessment is *prima facie* evidence that the work was performed to the satisfaction of the superintendent of streets. *Jennings v. LeBreton*, 80 Cal. 8; *Dunne v. Altschul*, 57 Cal. 472.

As to the necessity of the certificate of the engineer, see sec. 11 of this chapter.

CHAPTER II.

Improvement of Streets.

SECTION 1. All streets, lanes, alleys, places or courts, in the city and county now open or dedicated or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, lanes, al-

leys, places or courts, for the purposes of this chapter; and the Supervisors are hereby empowered to fix the width and grade thereof, and to order to be done therein and thereon any and all street work and street improvement under the proceedings hereinafter described.

Improvement of streets—*Laws Governing*.—The following are some of the acts relating to the matter of street improvement: Cons. Act, (Stats. 1856, 145), art. IV; act of April 27, 1860, (Stats. 1860, 272), sec. 1, subdiv. 1, authorizing repairs on streets fronting upon the water-front and streets in front of city property; act of April 26, 1862, (Stats. 1862, 466), authorizing the expenditure of money for cleaning streets; act of March 31, 1866, (Stats. 1865-6, 520), authorizing the repair of streets in front of property of the United States; act of March 28, 1868, (Stats. 1867-8, 463), and act of February 21, 1861, (Stats. 1861, 20), authorizing the board of supervisors to change the grade of streets; act of March 23, 1872, (Stats. 1871-2, 511), approving an order of the board of supervisors requiring property owners to keep sand, etc., from obstructing streets; act of April 3, 1876, (Stats. 1875-6, 795), authorizing the board of supervisors to clean the streets; act of April 1, 1872, (Stats. 1871-2, 804), providing a complete system of street improvement in the City and County of San Francisco; Act of March 6, 1883, (Stats. 1883, 32), providing a general system of street improvement throughout the state; act of March 18, 1885, (Stats. 1885, 147), which was of the same nature; act of February 27, 1893, (Stats. 1893, 33), providing for street improvement bonds.

The matter of the improvement of streets was provided for by the act to incorporate San Francisco, (Stats. 1850, 223), art. IV, and by the act to re-incorporate San Francisco, (Stats. 1855, 251), secs. 53, *et seq.*

The matter was also treated of by the Consolidation Act, (Stats. 1856, 145), art. IV, and by the following amendments to that act: Act of March 28, 1859, (Stats. 1859, 141); Act of March 31, 1866, (Stats. 1865-6, 549); Act of March 26, 1868, (Stats. 1867-8, 358); Act of April 4, 1870, (Stats. 1869-70, 890).

The provisions of these acts were superseded by the general act of April 1, 1872, (Stats. 1871-2, 804). This act in turn was abrogated by the adoption of the new Constitution, since it was in conflict with section 19 of article XI of the Constitution, and was not revived by the amendment to that section. *Thomason v. Ruggles*, 69 Cal. 465; *McDonald v. Patterson*, 54 Cal. 245; *Donahue v. Graham*, 61 Cal. 276; *Oakland P. Co. v. Hilton*, 69 Cal. 479; *Oakland P. Co. v. Tompkins*, 72 Cal. 5.

In order to comply with this provision of the Constitution, the Legislature in 1883 passed a law providing for street improvements in accordance with section 19 of article XI of the Constitution. After the amendment to that section, the Legislature in 1885 passed the act commonly known as the Vrooman Act, providing a general system of street improvement. Act of March 18, 1885, (Stats. 1885, 147).

This act was amended by the following acts: Act of March 15, 1887, (Stats. 1887, 148); Act of March 14, 1889, (Stats. 1889, 157); Act of March 17, 1891, (Stats. 1891, 116); Act of March 31, 1891, (Stats. 1891, 196); Act of March 31, 1891, (Stats. 1891, 461); Act of March 9, 1893, (Stats. 1893, 89); Act of March 11, 1893, (Stats. 1893, 172).

The Vrooman Act was held to be a general law and applicable to the City and County of San Francisco, and to supersede the charter of such city. *Thomason v. Ruggles*, 69 Cal. 465; *Ander-son v. De Urioste*, 96 Cal. 404.

This law will still be superior to the charter, unless the matter of street improvement comes within the expression "municipal affairs." (See Intro., p. 19.) As to whether or not it is a municipal affair, see: *Thomason v. Ruggles*, 69 Cal. 465; *South Pasadena v. Terminal R'y Co.*, 109 Cal. 315, 322; *San Francisco v. Spring Valley Water Works*, 48 Cal. 493, 529; *Montgomery v. Santa A. W. R'y Co.*, 104 Cal. 186; *People v. Holladay*, 93 Cal. 241, 248; *New Orleans etc. R. R. Co. v. New Orleans*, 44 La. Ann. 748; *Chicago etc. R. R. Co. v. Joliet*, 79 Ill. 25, 34; *Atlanta v. Gate City etc. Co.*, 71 Ga. 106, 124.

The power to make the improvement is exclusive in the board of supervisors, and it cannot delegate such power to the superintendent of streets. *Bolton v. Gilleran*, 105 Cal. 244.

SEC. 2. Application for the doing of any such work or improvement must in the first instance, except where otherwise provided in this article, be made in writing to the Board of Public Works; and if the expense thereof is to be assessed upon private property, the board shall investigate the same; and if it determine that such improvement is expedient, it shall so report to the Supervisors; and the Supervisors shall not order any such improvement until the same has been recommended by said board. When the construction of any sewer or drain shall involve a cost of more than five dollars per lineal foot for any block, it shall not be authorized except by an ordinance passed by the affirmative vote of not less than fourteen members of the Board of Supervisors. If an application is made for any work or improvement of which the expense is to be paid by the city and county, and the Board of Public Works shall not approve of such application, it shall report to the Supervisors its reasons for such disapproval, and the Supervisors may then, after having obtained from the Board of Public Works an estimate of the expense of said work or improvement, by ordinance passed by the affirmative vote of not less than fourteen members of the Board of Supervisors, order the doing of said work, or the making of said improvement.

The Board of Public Works may also, except as herein prohibited, recommend any improvement, the expense of which is to be paid by the city and county, though no application may have been made therefor, and must make, with said recommendation to the Supervisors, an estimate of the expense, and in such case the Supervisors may order the same done.

No street work or street improvements of any kind shall be ordered to be done by the Supervisors unless a written recommendation to do the same has been made to them by the Board of Public Works, and all such recommendations shall be made matters of record in the office of said board.

When the board shall recommend any work to be done on a street intersection or crossing, where the streets do not intersect each other at right angles, it shall in each such case determine what lots in the blocks adjacent to such intersection or crossing will be benefited by said work, and shall cause a map to be made on which shall be delineated the lots so to be benefited. Such map shall be transmitted to the Supervisors with said recommendation.

The petition.—This section does not expressly require a petition or application before the work can be done. The provision that "Application for the doing of any such work or improvement must in the first instance . . . be made in writing to the board of public works," would seem to require a petition. But if so, by whom is the petition to be made? If by the property-owners, how many must sign it? These matters are not provided for by the section, which would seem to be a conclusive argument against the necessity of any application or petition; but at the same time it is difficult to entirely ignore the provision that "application . . . must . . . be made in writing to the board of public works." If a petition is required, the board has no jurisdiction to proceed until the petition is filed; and if a proper petition is not filed, all subsequent proceedings are void. *Dyer v. North*, 44 Cal. 157; *Turrill v. Grat-tan*, 52 Cal. 97; *Gately v. Leviston*, 63 Cal. 365; *Spaulding v. Wesson*, 84 Cal. 141; *Dyer v. Miller*, 58 Cal. 585; *Spaulding v. North S. F. H. & R. R. Ass'n*, 87 Cal. 40.

SEC. 3. Before recommending to the Supervisors the ordering of any work or improvement, the expense of which, or any part thereof, is to be assessed upon private property, the Board of Public Works shall pass a resolution of its intention to recommend the same, specifying the work to be recommended, and shall fix a day when it shall take final action upon said resolution.

Upon the passage thereof the Secretary of the board shall forthwith, without any further authority, cause a copy of said resolution to be posted conspicuously for five days in the office of said Secretary, and to be published for a period of ten days (legal holidays excepted) and cause a copy to be deposited in the post office at the city and county, with postage prepaid, addressed to each person represented on the assessment book of the city and county for the next preceding fiscal year as being owner of land liable to be assessed for said improvement; but if said lot stand on said book in the name of unknown owners, such notice need not be sent.

The board shall also cause to be conspicuously posted along the line of said contemplated improvement, at points not more than one hundred feet in distance apart, notices, not less than three in all, of the passage of said resolution. Each of said notices shall be headed "Notice of Street Work" in letters of not less than two inches in length, and shall in legible characters state the fact of the passage of said resolution, its date, and, briefly, the work or improvement proposed, and refer to the resolution of intention for further particulars.

Resolution of intention.—The resolution of intention constitutes the sole authority of the board to proceed to order the work to be done, and no authority can be conferred thereby to do

any other work than that described in the resolution of intention. *Dougherty v. Hitchcock*, 35 Cal. 512; *San Francisco v. Clark*, 47 Cal. 456; *Beaudry v. Valdez*, 32 Cal. 269; *Himmelmann v. Satterlee*, 50 Cal. 68; *Stockton v. Whitmore*, 50 Cal. 554; *Partidge v. Lucas*, 99 Cal. 519; *Chambers v. Satterlee*, 40 Cal. 497; *McBean v. Redick*, 96 Cal. 191; *Dougherty v. Miller*, 36 Cal. 83.

As to the necessity of presenting the resolution of intention to the president of the board for approval, see: *Creighton v. Manson*, 27 Cal. 613; *Thompson v. Hoge*, 30 Cal. 179; *Hendrick v. Crowley*, 31 Cal. 471; *Beaudry v. Valdez*, 32 Cal. 269; *McDonald v. Dodge*, 97 Cal. 112.

A printed signature of the clerk to the resolution is sufficient. *Williams v. McDonald*, 58 Cal. 527.

If the contract includes work not named in the resolution, it is good as to the work which is named therein, if it can be separated from the other and estimated. *Beaudry v. Valdez*, 32 Cal. 269; *Chambers v. Satterlee*, 40 Cal. 497; *Himmelmann v. Satterlee*, 50 Cal. 68.

Publication of resolution.—An act authorizing street improvements, which does not provide for notice of the proceedings to the parties to be assessed for the expense, is unconstitutional and void. *Boorman v. Santa Barbara*, 65 Cal. 313.

The notice must be published by the authority of the board. *Chambers v. Satterlee*, 40 Cal. 497; *Dyer v. North*, 44 Cal. 157; *Shepard v. Colton*, 44 Cal. 628; *Meuser v. Risdon*, 36 Cal. 239; *Donnelly v. Tillman*, 47 Cal. 40; *Donnelly v. Marks*, 47 Cal. 187.

It is not necessary that the board should designate the newspaper in which the resolution should be published. It is sufficient if the resolution itself contain such designation. *King v. Lamb*, 117 Cal. 401.

Failure to publish for the length of time required renders the assessment void. *Brady v. Burke*, 90 Cal. 1.

As to the length of publication, see: *San Francisco v. McCain*, 51 Cal. 360; *San Francisco v. McCain*, 50 Cal. 210; *Miles v. McDermott*, 31 Cal. 270; *Taylor v. Palmer*, 31 Cal. 240; *Savings and Loan Soc. v. Thompson*, 32 Cal. 347; *Chambers v. Satterlee*, 40 Cal. 497; *Haskell v. Bartlett*, 34 Cal. 281; section 26 of this chapter.

Sufficiency of resolution.—The work to be done must be described in the resolution of intention. *Brady v. King*, 53 Cal. 44; *People v. McCune*, 57 Cal. 153.

It need not contain the plan and specifications of the proposed improvement. *Harney v. Heller*, 47 Cal. 15; *Fitzhugh v. Ashworth*, 119 Cal. 393.

A resolution sufficiently describes the work to be done if it declares that the street will be graded and macadamized from one designated point to another. *Emery v. San Francisco Gas Co.*, 28 Cal. 345.

A resolution which provides that a crossing be planked, and that the angular corners thereof be reconstructed, sufficiently describes the work. *Deady v. Townsend*, 57 Cal. 298.

A resolution of intention is not rendered uncertain by the provision, "except that portion required by law to be kept in order by the railroad company having its tracks thereon." *Whiting v. Townsend*, 57 Cal. 515.

A resolution providing that the street shall be improved where necessary is insufficient. *San Francisco v. Ladd*, 47 Cal. 603; *Himmelman v. McCreery*, 51 Cal. 562; *Randolph v. Gawley*, 47 Cal. 458; *Richardson v. Heydenfeldt*, 46 Cal. 68.

A resolution to macadamize or to curb and macadamize does not include work upon the sidewalk. *Dyer v. Chase*, 52 Cal. 440; *Himmelman v. Satterlee*, 50 Cal. 68.

Where a street has been previously graded and macadamized, a subsequent resolution of intention, which describes the work as "grading" and "macadamizing," instead of "re-grading" and "re-macadamizing," is sufficient. *Wells v. Wood*, 114 Cal. 255.

An order that granite curbs be laid on a specified street between two cross-streets, where not already laid, and the roadway thereof be paved with basalt blocks where not already so paved, is sufficient. *Williams v. Bergin*, 116 Cal. 56.

Different kinds of work may be included in one resolution. *Emery v. San Francisco Gas Co.*, 28 Cal. 345; *Dyer v. Hudson*, 65 Cal. 372.

Notice of resolution.—Necessity of: *Washburn v. Lyons*, 97 Cal. 314.

Where to be posted: *Miller v. Mayo*, 88 Cal. 568.

When to be posted: *Porphyry P. Co. v. Ancker*, 104 Cal. 340.

A notice which contains the whole resolution, and states the date and fact of its passage, need not refer to the resolution for further particulars. *Schmidt v. Market St. etc. R. R. Co.*, 90 Cal. 37.

The resolution as posted need not contain the names of the trustees who voted for or against it. *King v. Lamb*, 117 Cal. 401.

See further as to the contents of the notice: *Perine v. Erzgraber*, 102 Cal. 234; *San Jose Imp. Co. v. Auzerais*, 106 Cal. 498; *Vincent v. Pacific Grove*, 102 Cal. 405; *White v. Harris*, 116 Cal. 470.

As to the publication of the notice, see *Smith v. Hazard*, 110 Cal. 145.

SEC. 4. The owners of a majority of the frontage of the property fronting on said proposed work or improvement, and, in the case of a district, those owning more than one-half of the superficial area of the district, may make written objections to the same within ten days after the expiration of the time of the publication of said resolution of intention, which objections shall be delivered to the secretary of the Board of Public Works, who shall endorse thereon the date of its reception by him. Such objections shall be a bar for six months to any further proceedings in relation to the doing of said work or making said improvement, unless the owners of the one-half or more of the frontage or of the district, as aforesaid, shall meanwhile petition for the same to be done, and the same shall, after the expiration of said six months, be continued under the resolution of intention first passed if said board shall deem proper. If, however, the owners of at least two-thirds of the property fronting on said proposed work or improvement, and,

in the case of a district, those owning at least two-thirds of the superficial area of the district, shall make written objections to the same within said six months, no further proceedings shall be taken under the aforesaid resolution of intention.

When the work or improvement proposed to be done is the construction of sewers, manholes, culverts or cess-pools, and the objections thereto are signed by the owners of a majority of the frontage or of the district as aforesaid, the board shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The secretary shall thereupon notify the persons making such objections, by depositing a notice thereof in the post office at the city and county, postage prepaid, and addressed to each objector or his agent when he appears for such objector. At the time specified the board shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive; and if said objections are overruled the proceedings shall be continued as though no objections had been made.

At any time before the making of the assessment as hereinafter provided, all owners of lots of land liable to assessment therein, who, after the first publication of the aforesaid resolution of intention, may feel aggrieved, or who may have objections to any proceedings in relation to the performance of the work described in said resolution, may file with the secretary a petition of remonstrance, wherein they shall state in what respect they feel aggrieved, or the proceedings to which they object. Such petition or remonstrance shall be passed upon by the board, and its decision thereon shall be final and conclusive.

The protest.—Under the act of 1885 this protest was held to be a bar to any further proceedings under the original resolution, even after the expiration of six months, and that a new resolution of intention must be passed to authorize the improvement. *City Street Improvement Co. v. Babcock*, XVII Cal. Dec. 25.

The necessary result of this decision is that the property-owners can again protest against the work under the new resolution, and that this can be repeated *in infinitum*, and thus prevent the improvement from ever being made.

While it is not entirely clear, it is believed that this rule is changed by this section of the charter. It provides:

“Such objections shall be a bar for six months to any further proceedings in relation to the doing of said work or making said improvement, unless the owners of the one-half or more of the frontage or of the district, as aforesaid, shall meanwhile petition for the same to be done, *and the same shall, after the expiration of said six months, be continued under the resolution of intention first passed if said Board shall deem proper.*”

The portion in italics is not contained in the act of 1885. This provision would clearly permit the work to be done under the original resolution, unless it should be decided that the portion in italics only refers to the case where the owners of the one half or more of the frontage or of the district shall petition for the work to be done. It is believed, however, that this is not the proper construction of the provision, for the reason that, if so construed, the work could not be done after a protest even if one half of the owners should afterwards petition to have it done, until the expiration of six months. This would make a change in the effect of such a petition under the act of 1885, which would not be warranted by the language used. This construction is strengthened, if not made conclusive, by the latter portion of the section, which provides that if two thirds of the owners protest against the work, “no further proceedings shall be taken under the aforesaid resolution of intention.” Moreover, the latter portion of section 3 of the act of 1885, commented upon by the Supreme Court in *City Street Imp. Co. v. Babcock*, XVII Cal. Dec. 25. is not found in the charter.

Keeping these considerations in mind, the following rules may be laid down as to the effect of a protest under the charter:—

1. A protest by a majority of the frontage bars the work for six months; but at the expiration of that time the work may be done without any new resolution of intention.

2. If, after a protest by a majority of the frontage, one half of the frontage petitions to have the work done, it may be done as if no protest had ever been filed.

3. If, after a protest by a majority of the frontage, two thirds of the owners protest against the work, the six-month bar continues, and at the expiration of that time no further proceedings can be taken under the resolution of intention. It is believed that this petition can only be filed after a protest by a majority is filed.

It may be contended that there is a fourth possible case, viz: where a majority protest is filed, followed by a petition of a majority to do the work, and thereafter a protest is filed by two thirds of the owners. If such a contingency is contemplated by the charter, then, according to the construction given above to this section, the work might be entirely or almost done under a petition by a majority of the owners, only to be stopped by a protest by two thirds of the owners. In order to overcome this difficulty, it would have to be held that no work could be done after the filing of a petition by a majority of the owners asking that the work be done, until after the expiration of six months, a construction which has already been shown to be unjustified by the language used. The conclusion is that there can be no protest by two thirds of the owners after a petition has been filed by a majority to have the work done. That this must be the fact is evident, since the petition by a majority would clearly confer jurisdiction upon the board, and no one who had already signed such a petition would be permitted to afterwards protest against the work.

A protest presented more than ten days after the last publication of the notice is ineffectual. *Burnett v. Sacramento*, 12 Cal. 76.

A protest against an improvement on a certain portion of a

street, made not by the owners of property upon the portion of the street to be improved, but by owners along the street between certain points, is insufficient. *Alameda Macadamizing Co. v. Williams*, 70 Cal. 534.

An ordinance for an improvement, passed before the expiration of the time for presentation of protests, is not for that reason invalid. *Burnett v. Sacramento*, 12 Cal. 76.

A protest displaces the *prima facie* proof of regularity, and throws upon the plaintiff the burden of showing that the bar effected by the objections has been removed. *Dougherty v. Harrison*, 54 Cal. 428.

As to the determination of the question whether a majority of the owners signed the protest, see *Spaulding v. North S. F. H. & R. R. Ass'n*, 87 Cal. 40.

As to the form and contents of the protest, see *Los Angeles L. Co. v. Los Angeles*, 106 Cal. 156.

The protest may be signed by an agent. *Los Angeles L. Co. v. Los Angeles*, 106 Cal. 156.

The remonstrance.—If a remonstrance to a street improvement in San Francisco is filed with the board of supervisors and referred to a committee, and the board, before the committee reports, and without any action directly on the petition, directs the work to be done, it is practically a passing upon and decision against the remonstrance. *Harney v. Heller*, 47 Cal. 15.

The Legislature has power to provide that the tacit acquiescence of the parties interested in a street improvement, and their failure to challenge the proceedings therefor, while in progress, will estop them from questioning the regularity of the proceedings after they are completed. *Lent v. Tillson*, 72 Cal. 404.

An owner of land on a street who fails to file a remonstrance waives all objections to the form and granting of the petition; and the decision of the board in ordering the work to be done is conclusive as against collateral attack. *Spaulding v. North S. F. H. & R. R. Ass'n*, 87 Cal. 40.

Parties who do not remonstrate against a proposed improvement cannot claim the benefit of a remonstrance filed by other parties. *Harney v. Heller*, 47 Cal. 15.

Neither a void award nor a void contract upon such award is rendered valid by failure to file a remonstrance. *Capron v. Hitchcock*, 98 Cal. 427.

The provision authorizing a petition of remonstrance against acts and proceedings of the city council, was intended to be applicable only to acts and proceedings within the power of the council. *Capron v. Hitchcock*, 98 Cal. 427.

SEC. 5. When the contemplated work or improvement in the opinion of the Board of Public Works is of more than local or ordinary public benefit, it may recommend to the Supervisors that the expense of such work or improvement be made chargeable upon a district, and said board shall in its resolution of intention set out the district benefited by said work or improvement and to be assessed to pay the expense thereof. Objections to the extent and boundaries of the district of lands to be benefited by said work or improvement may be made by any interested party, in writing, within ten days after the expiration of the time of publication of the resolution of intention.

The secretary of the board shall lay said objections before it and the board shall, at its next meeting, fix a time for hearing said objections not less than one week thereafter. The secretary shall thereupon notify the persons making such objections by depositing a notice thereof in the post office at the city and county, postage prepaid, addressed to each objector. At the time specified the board shall hear the objections urged and pass upon the same, and if said objections are overruled, its decision shall be final and conclusive as to the extent and boundaries of the district.

If the objections are sustained, the board shall pro-

ceed to set out another district to the extent and boundaries of which objections may be made and a hearing had thereon as above provided; and so on in like manner until a district has been set out to the extent and boundaries of which all objections shall be overruled by the board—its decision in that behalf to be final and conclusive; and thereupon the proceedings shall continue the same as if no objections had been made. In its report to the Supervisors the board shall accompany its report with a diagram on which shall be delineated each separate lot, piece or parcel of land, the area in square feet of each of such lots, pieces or parcels of land, and the relative location of the same to the work or improvement proposed to be done within the limits of the district. Such diagram shall be certified to be correct by the secretary of the board.

District to be assessed.—It rests in the discretion of the Legislature to say upon what principle the assessment on lots fronting on a street, to pay for improvements on the street, shall be apportioned among the lots. *Emery v. San Francisco Gas Co.*, 28 Cal. 345; *Harney v. Benson*, 113 Cal. 314.

A street assessment may be apportioned to frontage of the land assessed, without other reference to benefits. *Jennings v. Le Breton*, 80 Cal. 8; *People v. Lynch*, 51 Cal. 15.

The assessment must be levied with uniformity and equality. *People v. Lynch*, 51 Cal. 15.

As to the description of the district, see: *Thomason v. Cuneo*, 119 Cal. 25; *Dehail v. Morford*, 95 Cal. 457; *Boorman v. Santa Barbara*, 65 Cal. 313; *Lent v. Tillson*, 72 Cal. 404, 416.

SEC. 6. When the work under any contract shall have been completed, the contractor shall make and file in the office of the Board of Public Works an affidavit to the effect that he has not entered into any private

agreement, verbal or written, with any person liable to be assessed for said work, or with any one on his behalf, to accept a price from him less than the price named in said contract, or to make any rebate or deduction to him from such price. Any such agreement shall be deemed a fraud upon all persons liable to be assessed for such work other than the property owners who were parties to the agreement, and shall make void, as to such persons so defrauded, any assessment made for the work done under such contract; and where there is more than one contractor each contractor shall make such affidavit.

Fraud of contractor.—An agreement between the contractor and an owner to do street work for a less sum than the contract price, is a fraud upon the other owners. *Nolan v. Reese*, 32 Cal. 484; *Chambers v. Satterlee*, 40 Cal. 497; *Himmelmann v. Hoadley*, 44 Cal. 213; *Brady v. Bartlett*, 56 Cal. 350.

In *Nolan v. Reese*, *supra*, it was held that such fraud could not be set up as a defense to the assessment. In *Brady v. Bartlett*, *supra*, the contrary was held under the act of 1872, which expressly provided that "fraud in the assessment or in any of the acts or proceedings prior thereto," should be a good defense. This would undoubtedly be the case under the charter.

See further secs. 16 and 18 of chapter I of this article.

SEC. 7. When any work in or upon any public street shall have been completed according to contract, and the affidavit mentioned in the next preceding section shall have been made, the board shall make an assessment to cover the sum due for the work performed and specified in said contract (including all incidental expenses), in conformity with the provisions of this article, according to the nature and character of the work. The assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to

be paid therefor, together with any incidental expenses, the rate per front foot assessed, the amount of each assessment, the name of the owner of each lot (if known to the board, and if not known, the word "*unknown*" shall be written opposite the number of the lot and the amount assessed thereon); the number of each lot assessed, and shall have attached thereto a diagram exhibiting the street or street crossing on which the work has been done, and showing the relative location of each distinct lot to the work done, numbered to correspond with the numbers in the assessment, and showing the number of front feet assessed for said work. A mistake in the name of the owner shall not invalidate any assessment.

When the expense of such work falls in part upon any person, company or corporation having railroad tracks upon the street where such work has been done, said assessment shall include an assessment against said person, company or corporation, for its legal proportion of said expense, and the same shall constitute a lien upon the road-bed, rolling stock, franchises and other property of such person, company or corporation, for a period of two years from the date of recording the warrant, assessment and diagram hereinafter provided for.

The assessment — Nature of.—The word "assessment" is used in the Constitution to represent local burdens imposed by municipal corporations upon property bordering upon an improved street, for the purpose of paying the cost of the improvement, and laid with reference to the benefit the property is supposed to receive from the expenditure of the money. *Taylor v. Palmer*, 31 Cal. 240.

An assessment for street improvements is a municipal tax. *Himmelmunn v. Spanagel*, 39 Cal. 389; *Whiting v. Quacken-*

bush, 54 Cal. 306; Emery v. San Francisco Gas Co., 28 Cal. 345; Hancock v. Whittimore, 50 Cal. 522; Emery v. Bradford, 29 Cal. 75; Chambers v. Satterlee, 40 Cal. 497. But see Creighton v. Manson, 27 Cal. 613.

While the power of assessment comes from the power of taxation, "assessments" and "taxation" are quite different. While "taxation" must be made according to the value of the property assessed, an "assessment" need not be made upon the *ad valorem* principle. Taylor v. Palmer, 31 Cal. 240; Chambers v. Satterlee, 40 Cal. 497.

Power to make.—Acts for the assessment of property for street improvements are valid and constitutional. Emery v. San Francisco Gas Co., 28 Cal. 345; Emery v. Bradford, 29 Cal. 75; Walsh v. Mathews, 29 Cal. 123; Taylor v. Palmer, 31 Cal. 240; Burnett v. Sacramento, 12 Cal. 76.

A provision making the owner of a lot bordering on an improved street personally liable for that part of his assessment for the improvement of the street which remains unpaid after a lien has been enforced against the lot, is unconstitutional. Taylor v. Palmer, 31 Cal. 240; Creighton v. Manson, 27 Cal. 613.

The provision of the Constitution that taxes shall be equal and uniform does not apply to assessments for street improvements. Burnett v. Sacramento, 12 Cal. 76.

The Legislature cannot by direct act make an assessment within an incorporated city, but may empower the municipal authorities to do so. Schumacker v. Toberman, 56 Cal. 508; People v. Lynch, 51 Cal. 15; Brady v. King, 53 Cal. 44.

An assessment is in the nature of a judgment and cannot be changed in the absence of statutory authority. Williams v. Bergin, 108 Cal. 166.

Equality and uniformity.—It rests in the discretion of the Legislature to say upon what principle the assessment for improvements on the streets shall be apportioned among the lots. Emery v. San Francisco Gas Co., 28 Cal. 345.

The assessment must be levied with equality and uniformity. Whiting v. Quackenbush, 54 Cal. 306; People v. Lynch, 51 Cal. 15.

The assessment may be apportioned with reference to the number of feet fronting on the improvement. *Jennings v. Le Breton*, 80 Cal. 8; *People v. Lynch*, 51 Cal. 15; *Whiting v. Quackenbush*, 54 Cal. 306.

The assessment cannot exceed the value of the benefit conferred on the lot by the improvement. *Creighton v. Manson*, 27 Cal. 613.

So property not benefited by an improvement cannot be subjected to an assessment for it. *Taylor v. Palmer*, 31 Cal. 240; *In re Market Street*, 49 Cal. 546. But see *Whiting v. Townsend*, 57 Cal. 515.

This, however, is a legislative question, and will not be reviewed by the courts, unless it manifestly appears that the Legislature abused its discretion in the matter, or that no benefit could reasonably have been expected to result from the improvement. *Lent v. Tillson*, 72 Cal. 404; *Harney v. Benson*, 113 Cal. 314.

By whom made.—The superintendent of streets formerly made the assessment, but under the charter this is made the duty of the board of public works. It has been held that an abortive attempt to make a valid assessment does not exhaust the power of the superintendent. *Himmelmänn v. Cofran*, 36 Cal. 411; *Dyer v. Scalmanini*, 69 Cal. 637.

The power to make the assessment cannot be delegated. *Bolton v. Gilleran*, 105 Cal. 244; *Perine C. & P. Co. v. Pasadena*, 116 Cal. 6; *Stansbury v. White*, 121 Cal. 433.

If the superintendent fails to authenticate his record by his official signature, it is his duty to afterwards make a valid assessment. *Shepard v. McNeil*, 38 Cal. 72.

This duty can be enforced by mandamus. *Himmelmänn v. Cofran*, 36 Cal. 411.

No time is limited within which the assessment must be made. *Himmelmänn v. Cofran*, 36 Cal. 411; *Williams v. Bergin*, 116 Cal. 56.

If the assessment is valid, the superintendent cannot be required to make another. *Frick v. Morford*, 87 Cal. 576.

To whom assessed.—It is well settled that the assessment must be made either to the real owner of the property or to the “unknown owner;” that an assessment to a person other than the real owner cannot be enforced against the owner, and that no other or different mode of assessment is permissible. *Mayo v. Ah Loy*, 32 Cal. 477; *Himmelmann v. Steiner*, 38 Cal. 175; *Taylor v. Donner*, 31 Cal. 480; *Himmelmann v. Hoadley*, 44 Cal. 213; *Smith v. Davis*, 30 Cal. 536; *Smith v. Cofran*, 34 Cal. 310; *Stockton v. Dunham*, 59 Cal. 608; *Blatner v. Davis*, 32 Cal. 328. But see *Conlin v. Seamen*, 22 Cal. 546.

The word “unknown” written in the assessment opposite the number of the lot, is sufficient to show that the name of the owner was unknown to the superintendent of streets. *Hewes v. Reis*, 40 Cal. 255; *Chambers v. Satterlee*, 40 Cal. 497.

Such a certificate is conclusive of the fact, and cannot be collaterally attacked in an action brought upon the assessment. *Chambers v. Satterlee*, 40 Cal. 497.

If the property is owned by tenants in common, it should be assessed to them jointly. *Blatner v. Davis*, 32 Cal. 328.

An assessment to a deceased person is void. *Smith v. Davis*, 30 Cal. 536.

The provision of the charter that “a mistake in the name of the owner shall not invalidate any assessment,” was evidently intended to obviate the effect of these decisions, and it would seem that an assessment to a person who is not the owner of the property assessed would be good under this provision.

Description of property assessed and diagram.—The property assessed must be described. *Himmelmann v. Cahn*, 49 Cal. 285.

As to what descriptions are sufficient, see: *San Francisco v. Quackenbush*, 53 Cal. 52; *Dyer v. Harrison*, 63 Cal. 447; *McDonald v. Conniff*, 99 Cal. 386; *Ede v. Knight*, 93 Cal. 159; *Hewes v. Reis*, 40 Cal. 255; *Whiting v. Quackenbush*, 54 Cal. 306; *Williams v. McDonald*, 58 Cal. 527; *Norton v. Courtney*, 53 Cal. 691; *Dorland v. McGlynn*, 47 Cal. 47; *Diggins v. Harts-horne*, 108 Cal. 154; *Labs v. Cooper*, 107 Cal. 656; *Himmelmann v. Bateman*, 50 Cal. 11; *Brady v. Page*, 59 Cal. 52, 301; *Williams v. Savings and Loan Soc.*, 97 Cal. 122.

As to assessments upon street railways, see sec. 24 of this chapter.

SEC. 8. The expense of all work or improvement done upon any part of said streets, lanes, alleys, places or courts, under the order of the Supervisors, shall be borne and paid for as follows:

First.—The city and county shall pay out of the General Fund the expense:

a. Of all work done on streets, crossings and intersections of streets that have been or may be accepted by the city and county, after the acceptance of the same, and all repairs and improvements deemed of urgent necessity that may be made upon the public streets and highways.

b. Of all work done in front of, or that may be assessed to, property owned by the city and county or by any department thereof.

c. Of all work done in front of, or that may be assessed to, property owned by the United States.

Second.—The expense of all sewers, cesspools, man-holes, culverts and drains, and of all grading, planking, macadamizing, paving, piling and capping any street, or portion thereof, and of all curbs thereon, and of all work done on sidewalks, shall be assessed upon the lands within the block or blocks adjacent thereto as herein provided, except where by an assessment district it may be provided otherwise.

Third.—The expense of all work on such portion of any street required by law to be kept in order by any person, company, or corporation, having railroad tracks thereon, shall be borne and paid for by such person, com-

pany or corporation, and shall be included in the assessment hereinbefore provided for.

No assessment shall be levied upon any property, which, together with all assessments for street improvements that may have been levied upon the same property during the year next preceding, will amount to a sum greater than fifty per centum of the value at which said property was assessed upon the last preceding assessment book of the city and county.

Limit of assessment.—By the Act of 1885, (Stats. 1885, 147), sec. 3, before that section was amended in 1891, (Stats. 1891, 196), it was provided that if the expense of the improvement exceeded one half of the assessed value of the land, the excess should be paid out of the city treasury. Under this provision, it was held that a lot could not be charged for work called for by one resolution of intention and order in a greater sum than one half the value of such lot, although the work is split up into separate contracts and assessments. *Kreling v. Muller*, 86 Cal. 465.

So it was held that a lot might be held to the extent of one half its assessed value for any single assessment for such work, although it had already, during the same year, been assessed for other work. *Warren v. Postel*, 99 Cal. 294.

This rule is changed by the charter, and the lot can only be held for one half its assessed value for street improvements in any one year. The expression "during the year next preceding" evidently means during the last preceding twelve months from the date of the assessment, and does not refer to a calendar year.

The city is only liable when the property is assessed for more than one half its value; and in order to bind the city, this fact must be alleged in the complaint. *McBean v. San Bernardino*, 96 Cal. 183.

As to street railways, see sec. 24 of this chapter.

SEC. 9. *Subdivision One.*—Except where the expense incurred for the street work and improvement authorized herein is to be assessed upon a district as hereinafter provided, such expense, other than that to be paid by a person, company or corporation having tracks on the street where such work and improvement has been done, shall be assessed upon the lots and lands fronting thereon, except as hereinafter specifically provided; each lot or portion of a lot being separately assessed in proportion to the frontage at a rate per front foot sufficient to cover the total expense of the work.

Subdivision Two.—The expense of all improvement except such as is done by contractors under the provisions of section sixteen of this chapter, until the streets, avenues, street crossings, lanes, alleys, places, or courts are finally accepted, as provided in section twenty-three of this chapter, shall be assessed upon the lots and lands as provided in this section according to the nature and character of the work.

Subdivision Three.—The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot on the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks.

Subdivision Four.—Where a main street terminates in another main street, the expense of the work done on

one-half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on the same, according to the frontage of such lots on said main street, and the expense of the other half of the width of said street upon the lot or lots fronting on the latter half of the street at such termination.

Subdivision Five.—Where any alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be assessed on all lots or portions of lots half way on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street if it does not meet another.

Subdivision Six.—The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, half way to the next street, place, or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

Subdivision Seven.—Where a subdivision street, avenue, lane, alley, place, or court, terminates in another street, avenue, lane, alley, place, or court, the expense of the work done on one-half the width of the subdivision street, avenue, alley, place, or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street or avenue, lane, alley, place, or court so terminating, according to its frontage thereon, half way on each side, respectively, to the next street, avenue, lane, alley, court, or place, or the end of such street, avenue, lane, alley, place, or court, if it does

not meet another, and the other one-half of the width upon the lots fronting such termination.

Subdivision Eight.—Where any work mentioned in this chapter, manholes, cesspools, culverts, crosswalks, piling and capping excepted, is done on either or both sides of the centre line of any street for one block or less, and further work opposite to the work of the same class already done is ordered to be done to complete the unimproved portion of said street, the assessment to cover the total expense of said work so ordered shall be made upon the lots or portions of the lots only fronting the portions of the work so ordered. When sewerage or re-sewerage is ordered to be done under the sidewalk or only on one side of a street for any length thereof, the assessment for its expense shall be made only upon the lots and lands fronting nearest upon that side, and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

Subdivision Nine.—Any owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the Supervisors, may perform at his or their own expense (after obtaining permission from the Board of Public Works so to do, but before said board has passed its resolution of intention to recommend grading inclusive of this) any grading upon said street, to its full width, or to the centre line thereof, and to its grade as then established, and thereupon may procure, at his or their own expense, a certificate from the City Engineer setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established

width and grade of said street, or to the centre line thereof, and thereafter may file said certificate in the office of the board. Said certificate shall be recorded in a properly indexed book kept for that purpose in the office of the board. Whenever thereafter the Supervisors order the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contract must express the price by the cubic yard for cutting and filling in grading, and such owner or owners, and his or their successors in interest, shall be entitled to credit on the assessment upon his or their lots and lands fronting on said street for grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their said certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been legally changed, only for so much of said certified work as would be required for grading to the grade as changed. Such owner or owners shall not be entitled to any credit that may be in excess of the assessments for grading upon the lots and land owned by him or them, and proportionately assessed for the whole of said grading. The board shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the changed grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned respectively by said certified owners and their successors in interest; but he shall not include any grading quanti-

ties or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. When any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work, except grading, on such streets, in front of any block, at his or their own expense, and the Supervisors shall subsequently order any work to be done of the same class in front of the same block, the work so done at the expense of such owner or owners shall be excepted from the order ordering the work to be done, as provided in subdivision ten of this section; but the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the Board of Public Works at the time said order is passed.

Subdivision Ten.—The Board of Public Works may include in the resolution of intention any of the different kinds of work mentioned in this chapter, and it may except therefrom any of said work already done upon the street to the official grade. The lots and portions of lots fronting upon said accepted work already done shall not be included in the frontage assessment for the class of work from which the exception is made; but this shall not be construed so as to affect the special provisions as to grading contained in subdivision nine of this section.

Subdivision Eleven.—When the resolution of intention declares that the expense of the work and improvement is to be assessed upon a district, immediately after the contractor has fulfilled his contract to the satisfaction of the Board of Public Works, or to the satisfaction

of the Supervisors on appeal, the Board of Public Works shall proceed to estimate upon the lands, lots, or portions of lots within said assessment district, as shown by the diagram provided for in section five of this chapter, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the expense of such proposed work, and in so doing shall assess said total sum upon the several pieces, parcels, lots, or portions of lots, and subdivisions of land in said district benefited thereby, to wit: Upon each respectively in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in this chapter.

Subdivision 1.—This subdivision adopts the so-called “front-foot” mode of assessment. This mode of assessment is constitutional. *Emery v. San Francisco Gas Co.*, 28 Cal. 345; *Emery v. Bradford*, 29 Cal. 75; *Taylor v. Palmer*, 31 Cal. 240; *Whiting v. Quackenbush*, 54 Cal. 306; *Whiting v. Townsend*, 57 Cal. 515; *Lent v. Tillson*, 72 Cal. 404; *Jennings v. Le Breton*, 80 Cal. 8. But see *Appendix*.

Under the act of April 1, 1872, (Stats. 1871-2. 804), which provided that the expense of any improvement should be assessed “upon the lots and lands fronting thereon,” it was held that this did not mean that each lot should pay for the work done in front of it, but that the whole expense should be assessed ratably upon all lands fronting on the work, and that where the board of supervisors order “that plank sidewalks be constructed on Olive Avenue, between Laguna and Buchanan Streets, where not already constructed, and that the roadway be macadamized where not already done,” the district to be assessed is the block between the streets mentioned, although none of the improvements are in front of some of the lots on the block. *Diggins v. Brown*, 76 Cal. 318.

The amount of the assessment depends on the frontage of the lot, irrespective of its shape, size or depth. *Diggins v. Harts-horne*, 108 Cal. 154.

Where the work is only on one side of the street, it should only be assessed on the lots on that side of the street. *McDonald v. Conniff*, 99 Cal. 386; *Perine v. Erzgraber*, 102 Cal. 234.

Each lot to be assessed.—If, in levying an assessment, a lot fronting on the street is left out, and the whole expense is assessed upon the remaining front feet, the whole assessment is void. *Whiting v. Quackenbush*, 54 Cal. 306; *People v. Lynch*, 51 Cal. 15; *Dyer v. Harrison*, 63 Cal. 447; *Diggins v. Brown*, 76 Cal. 318; *Davies v. Los Angeles*, 86 Cal. 37; *Moulton v. Parks*, 64 Cal. 166, 181. But see *Buckman v. Landers*, 111 Cal. 347.

A failure to assess property belonging to the United States, the state, or the city, does not render the assessment void. *People v. Austin*, 47 Cal. 353.

So if one lot is assessed for a portion of the expense which should have been assessed upon other lots the assessment is void. *Ryan v. Altschul*, 103 Cal. 174.

Subdivision 3.—Crossings.—A space formed where one street intersects and stops at another street, which continues on—as where Battery Street intersects and stops at Market Street in San Francisco—is not a street crossing. *Bassett v. Enwright*, 19 Cal. 635.

As to crossings formed by Montgomery Avenue, see *Kelly v. Luning*, 76 Cal. 309.

As to the meaning of the term “quarter block,” see sec. 26 of this chapter.

A block in the form of a right-angle triangle, bounded by main streets, and which touches another street on which an improvement has been made only at the point of its acute angle, is properly assessed for its part of the work done on the crossing formed by the intersection of the improved street with the intersecting street forming the base of the triangle. *Martin v. Wagner*, 120 Cal. 623.

Where an assessment is made for work on a main street crossing, if a lot is partly within and partly without one of the

quarter-blocks cornering upon the crossing, only such part of the lot must be assessed as lies within the quarter-block. *Parker v. Reay*, 76 Cal. 103.

Subdivision 4.—Termination.—This provision allows only one half of the expense of the work on the intersection to be charged upon the two quarter-blocks cornering thereon; and if they are assessed for the whole amount, the assessment is void. *Kenny v. Kelly*, 113 Cal. 364.

Subdivision 7.—Opposite termination.—A block, in the form of a right-angle triangle, bounded by main streets, and which touches another street on which an improvement has been made only at the point of its acute angle, is properly assessed for work done on the improved street opposite the termination of the street forming the hypotenuse of the triangle. *Martin v. Wagner*, 120 Cal. 623.

Subdivision 8.—Under a somewhat similar provision of the act of 1872 it was held that it did not mean that each lot shall pay for the work done in front of it, but that the cost of the work done on one side of a street shall be apportioned to all the lots on that side fronting on the work. Therefore, where the board of supervisors orders "that plank sidewalks be constructed on Olive Avenue, between Laguna and Buchanan Streets, where not already constructed, and that the roadway be macadamized where not already done," the lots to be assessed are all the lots on each side of the street in the block between Laguna and Buchanan Streets, and the cost of the work on one side of the street must be distributed against all of the lots on that side of the street in said block, even though no work be done in front of some one or more of them, and if any lot be omitted because no work was done in the front of it, the assessment is void. *Diggins v. Brown*, 76 Cal. 318.

SEC. 10. If at any time there shall be any street work or improvement done, and none of the methods hereinbefore provided are legally sufficient to authorize the Board of Public Works to make an assessment to pay

for the expense thereof, then said board shall, before it passes a resolution of its intention to recommend the ordering of said work or improvement, establish by resolution a method by means of which such assessment shall be made; and on the completion of the work or improvement to the satisfaction of said board, or to the satisfaction of the Supervisors on appeal, said board shall make an assessment to pay the expense thereof according to the method established by said resolution.

If an assessment is void when made, a subsequent ordinance or statute validating it, is unconstitutional. *Kelly v. Luning*, 76 Cal. 309; *Brady v. King*, 53 Cal. 44; *Schumacker v. Toberman*, 56 Cal. 508.

SEC. 11. In making all assessments the Board of Public Works shall act as a board, and the assessment shall be authenticated by the signatures of all the members thereof.

Authentication.—*Himmelmänn v. Hoadley*, 44 Cal. 213; *Himmelman v. Danos*, 35 Cal. 441; *Dougherty v. Hitchcock*, 35 Cal. 512; *Gillis v. Cleveland*, 87 Cal. 214.

SEC. 12. To said assessment shall be attached a warrant which shall be signed by the president of the Board of Public Works and countersigned by the secretary thereof. Said warrant shall be substantially in the following form:

By virtue hereof the Board of Public Works of the City and County of San Francisco, by the authority vested in it, does authorize and empower (name of contractor) his (or their) agents, or assigns, to demand and receive the several assessments upon the assessment and

diagram hereto attached, and this shall be his (or their) warrant for the same.

(Date) ———. (Name of president of Board of Public Works.)

Countersigned by (Name of secretary of Board of Public Works.)

Said warrant, assessment and diagram shall be recorded in the office of the board. When so recorded the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any warrant, assessment and diagram, all persons interested in said assessment shall be deemed to have notice of the contents of the record thereof.

After said warrant, assessment and diagram are recorded, the same shall be delivered to the contractor, or his agent or assigns, on demand, but not until after the payment to the board of the incidental expenses not previously paid by the contractor or his assigns. By virtue of said warrant said contractor, or his agents or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments.

When it shall appear by the final judgment of any court in this state having jurisdiction to render such judgment, that any suit brought to foreclose the lien of any assessment for street work made under this chapter, or in the recording thereof, has been defeated by reason of any defect, error, informality, omission, irregularity, or illegality thereof, or therein, or in the return of the warrant issued pursuant to such an assessment, or in

the recording of any such warrant, any person interested therein may, at any time within seven months after the entry of said final judgment, apply to the board for another assessment to be issued in conformity to law; and the board shall, within sixty days after the time of said application, make and deliver to said applicant a new assessment, diagram and warrant in accordance with law, and sign, record and authenticate the same as above provided. Such assessment shall be a lien upon the lots of land set out therein for the period of two years from the date of its recording, and suit may be brought to enforce said lien as provided in this chapter. Should such final judgment be that of the Superior Court for the city and county and an appeal therefrom to the Supreme Court of the state has been taken, no such other assessment shall be made until said appeal has been determined.

Warrant.—The countersigning of the warrant is merely a ministerial act. *Beaudry v. Valdez*, 32 Cal. 269.

The warrant must be dated, and must contain the day and year. *Shipman v. Forbes*, 97 Cal. 572.

The fact that it was dated when countersigned will not make it valid if it was not dated when signed. *Shipman v. Forbes*, 97 Cal. 572.

Such warrant must be in the form prescribed by the charter. *Lucas v. San Francisco*, 7 Cal. 463; *Martin v. San Francisco*, 16 Cal. 285; *Argenti v. San Francisco*, 16 Cal. 255.

As to the service of the warrant, see *Guerin v. Reese*, 33 Cal. 292.

The warrant may be issued to the assignee of the contractor. *Taylor v. Palmer*, 31 Cal. 240.

Any irregularity in countersigning the warrant is waived by failure to appeal to the common council. *Beaudry v. Valdez*, 32 Cal. 269.

Recording warrant, assessment, and diagram.—In order to constitute a lien, the warrant, assessment, and diagram must be recorded before they are delivered to the contractor. *Gillis v. Cleveland*, 87 Cal. 214; *Himmelman v. Danos*, 35 Cal. 441; *Himmelmänn v. Bateman*, 50 Cal. 11; *Norton v. Courtney*, 53 Cal. 691.

The proper mode of authenticating the record of the assessment, diagram, and warrant is to append thereto the official certificate of the officer whose duty it is to make the record. *Himmelmänn v. Hoadley*, 44 Cal. 213.

Without such a certificate the record is valueless. *Himmelman v. Danos*, 35 Cal. 441; *Witter v. Bachman*, 117 Cal. 318.

The certificate authenticating the record may be signed by a deputy of the street superintendent. *Himmelmänn v. Hoadley*, 44 Cal. 213.

If any material part of the assessment is omitted from the record, the record is ineffectual. *Himmelmänn v. Bateman*, 50 Cal. 11; *Norton v. Courtney*, 53 Cal. 691; *Labs v. Cooper*, 107 Cal. 656.

But the omission of the name and official designation of the mayor from the warrant will not invalidate the assessment. *Gillis v. Cleveland*, 87 Cal. 214.

The engineer's certificate must be recorded with the warrant, assessment, and diagram, and if recorded in a separate book, the record is invalid. *Rauer v. Lowe*, 107 Cal. 229; *Buckman v. Cuneo*, 103 Cal. 62.

The certificate need not, however, be attached to the assessment. *Gray v. Lucas*, 115 Cal. 430.

In order to obtain a lien, a substantial compliance with every requirement of the statute as to the recording of the warrant, assessment, and diagram is necessary. *Rauer v. Fay*, 110 Cal. 361; *Schwiesau v. Mahon*, 110 Cal. 543; *Ryan v. Altschul*, 103 Cal. 174.

Second assessment.—The second assessment is only allowable in case the action was defeated for one of the reasons mentioned, and the facts upon which the judgment is based must show this fact. *Gray v. Lucas*, 115 Cal. 430; *Gray v. Richardson*, XVI Cal. Dec. 202.

Where, in an action to recover the amount of an assessment, the property-owners set up that the assessment is void, but it is in fact valid, and the court erroneously holds that it is void, the property-owners are estopped to deny the authority of the superintendent of streets to make a second assessment. *Dyer v. Scalmanini*, 69 Cal. 637.

The mere fact that some of the property-owners have paid the assessment, will not prevent a second assessment being made if the first was irregular. But, in such a case, such payments will be considered as a payment on account and the contractor will be compelled to satisfy the assessment of record to the extent of such payments. *Wood v. Strother*, 76 Cal. 545.

An abortive attempt to make a valid street assessment does not exhaust the power of the superintendent. *Himmelmann v. Cofran*, 36 Cal. 411.

As to the time within which the second assessment is to be made, see *Wood v. Strother*, 76 Cal. 545.

Lien of the assessment.—In order to obtain a lien, a substantial compliance with every requirement of the statute is necessary. *Rauer v. Fay*, 110 Cal. 361; *Schwiesau v. Mahon*, 110 Cal. 543; *Ryan v. Altschul*, 103 Cal. 174.

If an action upon a street assessment be commenced within two years from the recording of the assessment, the lien will not lapse, though the judgment is rendered after the two years expires. *Dougherty v. Henarie*, 47 Cal. 9; *Randolph v. Bayue*, 44 Cal. 366; *Himmelman v. Carpentier*, 47 Cal. 42; *Dorland v. McGlynn*, 47 Cal. 47.

An action cannot be maintained to enforce a lien which does not exist at the time the action is commenced. *Reis v. Graff*, 51 Cal. 86.

Each lot is separately liable for its proportion of the cost of the improvement, and the liability of each is independent of any other; and the foreclosure of a lien upon one lot is not a bar to an action to foreclose a lien upon another lot owned by the same person. *Gillis v. Cleveland*, 87 Cal. 214.

The foreclosure of a junior lien does not extinguish prior liens, if the holders of such liens are not made parties to the action. *Wood v. Brady*, 68 Cal. 78.

If at the time the contract is let, a lot fronting on the improvement is one lot, the owner, by selling a part of it before the assessment is made, cannot prevent the contractor from having a lien on the whole lot. *Dougherty v. Miller*, 36 Cal. 83.

A tax-deed extinguishes the lien. *Dougherty v. Henarie*, 47 Cal. 9.

A homestead is subject to the lien. *Perine v. Forbush*, 97 Cal. 305.

Incidental expenses.—An item for engineering work is properly included as “incidental expenses.” *McDonald v. Conniff*, 99 Cal. 386.

The term “incidental expenses” as used in the Act of 1872 was confined to contracts for grading. *Deady v. Townsend*, 57 Cal. 298.

See further sec. 26 of this chapter.

SEC. 13. The contractor or his assigns, or some person on his or their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made, the contractor, his assigns, or some person on his or their behalf, shall receipt the same upon the assessment in the presence of the person making such payment, and shall also give a receipt if demanded. When the persons so assessed, or their agents, cannot conveniently be found or when the owner of the lot is stated as “unknown” upon the assessment, then said contractor or his assigns, or some person on his or their behalf, shall publicly demand payment on the premises assessed.

The warrant shall be returned to the Board of Public Works within thirty days after its date with a return indorsed thereon, signed by the contractor or his assigns, or some person on his or their behalf, verified upon oath, stating the nature and character of the demand, and

whether any of the assessments remain unpaid in whole or in part, and the amount thereof. Thereupon the secretary of the board shall record the return so made in the margin of the record of the warrant and assessment.

The board can at any time receive the amount due upon any assessment and warrant issued by it and give a good and sufficient discharge therefor; but no such payment so made after suit has been commenced shall operate, without the consent of the plaintiff in the action, as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff.

The board may release any assessment upon the books of its office on the payment to it of the amount of the assessment with interest against any lot or on the production to it of the receipt of the party or his assigns to whom the assessment and warrant were issued. If any contractor shall fail to return his warrant within the time and in the form provided in this section he shall thenceforth have no lien upon the property assessed; but if any warrant is lost, upon proof of such loss a duplicate may be issued, upon which a return may be made with the same effect as if the original had been so returned. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of seven per centum per annum until paid.

The demand.—It is the duty of the contractor to make a reasonable effort to find and serve the person assessed; failing in this, it is his next duty to make a like effort to find and serve the agent of the person assessed; and only when such first and second efforts have failed, is he authorized to make service by a public demand. *Guerin v. Reese*, 33 Cal. 292; *McBean v. Martin*, 96 Cal. 188.

An agent of an assignee of the contractor is competent to make the demand. *Himmelman v. Woolrich*, 45 Cal. 249; *Gaffney v. Gough*, 36 Cal. 104.

When the assessment is to "unknown owners," a personal demand is unnecessary. *Whiting v. Townsend*, 57 Cal. 515.

In such a case the demand must be made publicly on the premises, and a demand made to the owner personally, or on the street in front of the property assessed, is not sufficient. *Alameda M. Co. v. Williams*, 70 Cal. 534.

A demand for the aggregate sum due on two lots is insufficient. The demand must be on each lot, for the amount assessed thereon. *Schirmer v. Hoyt*, 54 Cal. 280.

The demand must be for the amount due. *Dyer v. Chase*, 52 Cal. 440; *Donnelly v. Howard*, 60 Cal. 291; *Dorland v. Bergson*, 78 Cal. 637.

If at the time of the demand the contractor stood upon any part of the lot assessed, the demand is good. *Ede v. Knight*, 93 Cal. 159.

As to the tone of voice in which the demand must be made, see *Himmelman v. Booth*, 53 Cal. 50.

The return.—The return is *prima facie* evidence of the demand. *Dyer v. Brogan*, 57 Cal. 234; *Deady v. Townsend*, 57 Cal. 298; *Himmelman v. Hoadley*, 44 Cal. 213; *Ede v. Knight*, 93 Cal. 159; *Buckman v. Landers*, 111 Cal. 347.

It is also *prima facie* evidence that the affiant is the agent of the contractor. *Whiting v. Townsend*, 57 Cal. 515; *Foley v. Bullard*, 99 Cal. 516.

The return must show a demand upon the person assessed or a satisfactory reason why it was not done before resorting to the other modes of making a demand. *Guerin v. Reese*, 33 Cal. 292.

The return is to be made within thirty days after its date, but there is no provision as to when it shall be recorded, except that it shall be done "thereupon." See *Himmelman v. Reay*, 38 Cal. 163.

If the assessment is made after the death of the owner, it is not a claim which is required to be presented to the administrator. *Hancock v. Whittemore*, 50 Cal. 522.

SEC. 14. The owners, whether named in the assessment or not, the contractor or his assigns, and all other persons directly interested in any work provided for in this chapter, or in the assessment, feeling aggrieved by any act or determination of the Board of Public Works in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the board, shall, within thirty days after the date of the warrant, appeal to the Supervisors, by briefly stating their objections in writing and filing the same with the Clerk of the Supervisors. Notice of the time and place of the hearing, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations or proceedings objected to or complained of, shall be published for five days. Upon such appeal the Supervisors may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the board relative to said work, may confirm, amend, set aside, alter, modify or correct the assessment in such manner as to them shall seem just; and require the work to be completed according to the directions of the Supervisors, and may at their option direct the Board of Public Works to correct the warrant, assessment or diagram in any particular, or to make and issue a new warrant, assessment and diagram to conform to the decisions of the Supervisors in relation thereto.

All the decisions and determinations of the Supervisors, upon notice and hearing as aforesaid, shall be final

and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities and irregularities, which the Supervisors might have remedied and avoided; and no assessment shall be held invalid, except upon appeal to the Supervisors, as provided in this section, for any error, informality or other defect in the proceedings prior to the assessment, or in the assessment itself, where the Board of Public Works has acquired jurisdiction to make the same.

Appeal.—The failure of a property-owner who is dissatisfied with a street assessment to appeal to the board of supervisors, estops him from complaining of any matters which were the subject of appeal. *McVerry v. Boyd*, 89 Cal. 304; *Bucknall v. Story*, 46 Cal. 589; *Dyer v. Parrott*, 60 Cal. 551; *Dorland v. McGlynn*, 47 Cal. 47; *Fanning v. Leviston*, 93 Cal. 186; *Lent v. Tillson*, 72 Cal. 404; *Frick v. Morford*, 87 Cal. 576; *Taylor v. Palmer*, 31 Cal. 240; *Boyle v. Hitchcock*, 66 Cal. 129; *Himmelmann v. Hoadley*, 44 Cal. 276; *Beaudry v. Valdez*, 32 Cal. 269; *Hewes v. Reis*, 40 Cal. 255; *Blair v. Luning*, 76 Cal. 134; *Jennings v. Le Breton*, 80 Cal. 8; *McDonald v. Conniff*, 99 Cal. 386; *Spaulding v. North S. F. H. & R. R. Ass'n*, 87 Cal. 40; *Oakland P. Co. v. Rier*, 52 Cal. 270; *Chambers v. Satterlee*, 40 Cal. 497; *McSherry v. Wood*, 102 Cal. 647; *Treanor v. Houghton*, 103 Cal. 53; *Harney v. Benson*, 113 Cal. 314; *Warren v. Riddell*, 106 Cal. 352; *Girvin v. Simon*, 116 Cal. 604.

On the other hand, the failure to appeal does not waive defects which could not have been remedied by appeal. *Manning v. Den*, 90 Cal. 610; *Frick v. Morford*, 87 Cal. 576; *Partridge v. Lucas*, 99 Cal. 519; *Warren v. Chandos*, 115 Cal. 382.

When the assessment is absolutely void for want of jurisdiction of the board to make it, a failure to appeal does not validate the assessment. *Perine v. Forbush*, 97 Cal. 305; *Partridge v. Lucas*, 99 Cal. 519; *Bassett v. Enwright*, 19 Cal. 635; *Manning v. Den*, 90 Cal. 610; *Mahoney v. Braverman*, 54 Cal. 565; *Donnelly v. Howard*, 60 Cal. 291; *Smith v. Cofran*, 34 Cal. 310; *San Jose Imp. Co. v. Auzerai*, 106 Cal. 498; *Kenny v. Kelly*,

113 Cal. 364; Ryan v. Altschul, 103 Cal. 174; Capron v. Hitchcock, 98 Cal. 427; Dougherty v. Hitchcock, 35 Cal. 512.

Where a lot is not liable to be assessed, the owner is not a party interested, and, therefore, cannot appeal. Bassett v. Enwright, 19 Cal. 635; Smith v. Cofran, 34 Cal. 310.

But where the assessment is merely excessive, it may be corrected on appeal. Dowling v. Conniff, 103 Cal. 75; Wells v. Wood, 114 Cal. 255. But see Kenny v. Kelly, 113 Cal. 364.

Failure to appeal will not validate a void contract. Brock v. Luning, 89 Cal. 316; Burke v. Turney, 54 Cal. 486; Dougherty v. Hitchcock, 35 Cal. 512; McBean v. Redick, 96 Cal. 191; Manning v. Den, 90 Cal. 610; Schwiesau v. Mahon, 110 Cal. 543.

If an appeal is improperly dismissed, the assessment is not thus made a finality. People v. O'Neil, 51 Cal. 91. But see Mahoney v. Braverman, 54 Cal. 565.

Notice of the appeal must be given according to the statute, and actual knowledge merely is not sufficient. Williams v. Bergin, 108 Cal. 166.

A protest to the assessment is equivalent to an appeal. Belser v. Hoffschneider, 104 Cal. 455.

After the board has once acted upon an appeal, it cannot review its action. Belser v. Hoffschneider, 104 Cal. 455.

The effect of an appeal is to suspend all actions for the collection of the assessment. Williams v. Bergin, 108 Cal. 166.

As to the form of the notice of appeal, see Williams v. Viselich, 121 Cal. 315.

SEC. 15. At any time after the period of thirty-five days from the day of the date of the warrant, or if an appeal has been taken to the Supervisors, then, at any time after five days from the decision of the Supervisors on such appeal, or after the return on the warrant, after the same may have been corrected, altered or modified, as herein provided, but not less than within thirty-five days from the date of the warrant, the contractor or his

assignee may sue in his own name the owner or the mortgagee of the land, lots, or portions of lots assessed on the day of the date of the recording of the warrant, assessment and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of seven per centum per annum until paid.

In all cases of recovery under the provisions of this chapter the plaintiff shall recover the sum of fifteen dollars in addition to the taxable costs, as attorney's fees, but not any percentage upon said recovery. When suit has been brought, after a personal demand has been made and a refusal to pay such assessment so demanded, the plaintiff shall also be entitled to have and recover said sum of fifteen dollars as attorney's fees in addition to all taxable costs, notwithstanding that the suit may be settled or a tender be made before a recovery in said action, and he may have judgment therefor.

Said warrant, assessment and diagram, with the affidavit of demand and non-payment, shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the Board of Public Works and of the Supervisors upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action. The court in which said suit shall be commenced shall have power to adjudge and decree a lien against the lots of land assessed, and to order such premises to be sold on execution as in other cases of the sale of real estate by the process of said courts. In all actions brought to enforce the lien of assessments made

pursuant to the provisions of this chapter the proceedings therein shall be governed and regulated by the provisions of this chapter, and, when not in conflict herewith, by the codes of this state.

Actions on—The complaint.—The complaint must show that the various provisions of the statute under which it is sought to charge the defendant were complied with. *Perine v. Forbush*, 97 Cal. 305; *Himmelman v. Danos*, 35 Cal. 441.

It must allege that the notice of the award of the contract was published by order of the board of supervisors. *Himmelman v. Townsend*, 49 Cal. 150.

It must show that the contract fixed the time of the commencement and completion of the work. *Washburn v. Lyons*, 97 Cal. 314.

It must allege that the assessment was made and issued. *San Francisco v. Eaton*, 46 Cal. 100.

It should show that the assessment was "upon the lots and lands fronting" upon the improvement. *Miller v. Mayo*, 88 Cal. 568; *Treanor v. Houghton*, 103 Cal. 53.

It must allege that the defendants are the owners of, or have some interest in, the land. *San Francisco v. Doe*, 48 Cal. 560; *Santa Barbara v. Huse*, 51 Cal. 217.

It must contain a description of the property assessed. *Diggins v. Hartshorne*, 108 Cal. 154.

On the other hand, it need not allege that notice of the intention of the board was given in the resolution, nor give the name of the official newspaper. *Himmelman v. Woolrich*, 45 Cal. 249.

It is not necessary to allege that the board of supervisors ordered the clerk to sign the resolution of intention. *Himmelman v. Woolrich*, 45 Cal. 249.

It need not allege any special demand upon the defendant, other than the demand required by the statute. *Conlin v. Seamen*, 22 Cal. 546.

As to how the facts are to be stated, see: *Himmelman v. Woolrich*, 45 Cal. 249; *Dyer v. North*, 44 Cal. 157; *Pacific P. Co. v. Bolton*, 97 Cal. 8; *Girvin v. Simon*, 116 Cal. 604.

There can be no right of action upon an assessment until after the issuance and return of the warrant. *Williams v. Bergin*, 108 Cal. 166.

The assessment need not be presented to the personal representatives of a deceased owner for allowance. *Hancock v. Whittemore*, 50 Cal. 522; *People v. Olvera*, 43 Cal. 492.

The action is equitable in its nature, and must be brought in the superior court. *Mahlstadt v. Blanc*, 34 Cal. 577.

Title to the land may be litigated in the action to foreclose the assessment. *Taylor v. Donner*, 31 Cal. 480; *Robinson v. Merrill*, 87 Cal. 11.

The answer.—An allegation in the answer that the board of supervisors had no jurisdiction to order the work done, is a mere conclusion of law. *Spaulding v. Wesson*, 84 Cal. 141.

An answer denying that the superintendent of streets “originally” made the assessment in his official capacity is evasive. *Shepard v. McNeil*, 38 Cal. 72.

When the complaint alleges that “East Street, in the City of Stockton has been laid out and dedicated as a public highway, and had been used as a public thoroughfare for sixteen years,” and the answer denies that there is such a street in Stockton, the answer is evasive. *Fuhn v. Weber*, 38 Cal. 636.

Non-performance of the work must be pleaded. *Santa Cruz R. P. Co. v. Bowie*, 104 Cal. 286.

Parties.—1. *Plaintiff.*—The action should be brought in the name of the contractor or his assignee, and not in the name of the city. *Dyer v. North*, 44 Cal. 157; *Hendrick v. Crowley*, 31 Cal. 471; *Dyer v. Pixley*, 44 Cal. 153; *Bays v. Lapidge*, 52 Cal. 481.

The assessment may be assigned and the action brought in the name of the assignee. *Diggins v. Hartshorne*, 108 Cal. 154.

But a mere right to a lien cannot be assigned. *Rauer v. Fay*, 110 Cal. 361.

As to the assignment of the contract, see sec. 21 of chapter I of this article.

2. *Defendant.*—When the owner dies after the passage of the resolution of intention, but before the assessment, his personal

representatives are not necessary parties defendant. His heirs or devisees are the only necessary defendants. *Phelan v. Dunne*, 72 Cal. 229. But see *Parker v. Bernal*, 66 Cal. 113.

All the owners of the property must be made parties defendant. *Robinson v. Merrill*, 87 Cal. 11; *Hancock v. Bowman*, 49 Cal. 413; *Mayo v. Ah Loy*, 32 Cal. 477; *Clark v. Porter*, 53 Cal. 409; *Diggins v. Reay*, 54 Cal. 525; *Harney v. Applegate*, 57 Cal. 205.

The legal owner at the time of the rendition of the judgment must be made a party, unless he is a purchaser *pendente lite* affected with notice of the action; otherwise he will not be bound by the judgment. *Brady v. Burke*, 90 Cal. 1.

Before a defendant can defend he must set up the nature and extent of his interest in the property. *Himmelman v. Spanagel*, 39 Cal. 389.

If the action be dismissed as against one of the owners, no judgment can be rendered against the other defendants. *Driscoll v. Howard*, 63 Cal. 438; *Harney v. Applegate*, 57 Cal. 205. But see *McSherry v. Wood*, 102 Cal. 647.

So if one of the defendants is not served with process, no judgment can be rendered against the other defendants. *Diggins v. Reay*, 54 Cal. 525.

Set-off and counter-claim.—No demand can be made a set-off against the assessment, unless expressly authorized by statute. *Himmelman v. Spanagel*, 39 Cal. 389.

So damages for injury to the property against which the assessment is made cannot be set up as a counter-claim in the action to recover an assessment. *Himmelman v. Spanagel*, 39 Cal. 389.

Evidence.—The certificate of the city and county surveyor and of the superintendent of streets, and the assessment, diagram, and warrant, are *prima facie* evidence of the fact that the contract has been duly performed. *Ede v. Knight*, 93 Cal. 159; *Fanning v. Leviston*, 93 Cal. 186; *McDonald v. Conniff*, 99 Cal. 386; *Dorland v. McGlynn*, 47 Cal. 47; *Himmelman v. Danos*, 35 Cal. 441; *Burke v. Turney*, 54 Cal. 486; *Himmelman v. Carpentier*, 47 Cal. 42; *Manning v. Den*, 90 Cal. 610; *Perine v.*

Erzgraber, 102 Cal. 234; Dowling v. Conniff, 103 Cal. 75; Buckman v. Landers, 111 Cal. 347; Hellman v. Shoulters, 114 Cal. 136.

This is a rule of evidence and not of pleading. Burke v. Turney, 54 Cal. 486.

The *prima facie* effect of the assessment is not overcome by the certificate of the engineer. Buckman v. Landers, 111 Cal. 347; Williams v. Savings etc. Soc., 97 Cal. 122.

The fact that a protest to the work was filed by the property-owners overcomes the *prima facie* presumption arising from the assessment, diagram, and warrant. Dougherty v. Harrison, 54 Cal. 428.

The burden of proof that the defendant is the owner of the land is upon the plaintiff. Robinson v. Merrill, 87 Cal. 11.

The assessment, warrant, and diagram are not *prima facie* evidence of any step subsequent to the return. Witter v. Bachman, 117 Cal. 318.

It is sufficient to prove that the defendants were the owners in fee of the land, without regard to the particular undivided interest claimed by a defendant in his answer. Whiting v. Townsend, 57 Cal. 515.

The judgment.—No personal judgment can be rendered against the owner. Walsh v. Matthews, 29 Cal. 123; Taylor v. Palmer, 31 Cal. 240; Creighton v. Manson, 27 Cal. 613; Gillis v. Cleveland, 87 Cal. 214; Heft v. Payne, 97 Cal. 108; Randolph v. Bayne, 44 Cal. 366; Coniff v. Hastings, 36 Cal. 292; Gaffney v. Gough, 36 Cal. 104; Beaudry v. Valdez, 32 Cal. 269; Manning v. Den, 90 Cal. 610. But see Emery v. Bradford, 29 Cal. 75.

Although the assessment may be void, if the summons is properly served, the judgment is valid and conclusive. Mayo v. Ah Loy, 32 Cal. 477.

The judgment must contain a description of the property. Diggins v. Hartshorne, 108 Cal. 154.

Penalty.—Bucknall v. Story, 36 Cal. 67; Weber v. San Francisco, 1 Cal. 455.

Interest.—Himmelman v. Oliver, 34 Cal. 246; Haskell v. Bartlett, 34 Cal. 281; Dougherty v. Henarie, 47 Cal. 9; Weber

v. San Francisco, 1 Cal. 455; Bucknall v. Story, 36 Cal. 67; Randolph v. Bayue, 44 Cal. 366.

Attorney's fees.—The fee may be allowed against each lot, although owned by the same defendant. Gillis v. Cleveland, 87 Cal. 214.

Only one fee can be recovered in an action, regardless of how many different causes of action may be included in the complaint. Hughes v. Alsip, 112 Cal. 587.

Findings.—Dyer v. Chase, 57 Cal. 284; Spaulding v. Wesson, 84 Cal. 141; Jennings v. Le Roy, 63 Cal. 397; Oakland P. Co. v. Bagge, 79 Cal. 439; Brady v. Burke, 90 Cal. 1; Belser v. Hoffschneider, 104 Cal. 455.

Sale.—A sale of land to satisfy a void assessment, would be taking property "without due process of law." Brady v. King, 53 Cal. 44.

A purchaser at such a sale would acquire no title. Bucknall v. Story, 46 Cal. 589.

The deed is not evidence without the assessment. Bucknall v. Story, 36 Cal. 67; Brady v. Burke, 90 Cal. 1.

The deed relates back to the date of the original foreclosure. Brady v. Burke, 90 Cal. 1.

The deed is *prima facie* evidence of the preliminary steps requisite to its validity. Clarke v. Mead, 102 Cal. 516.

As to the right to redeem from the sale, see: Hubbell v. Campbell, 56 Cal. 527; Code of Civil Procedure, secs. 700-706; sec. 20 of this chapter.

SEC. 16. When any portion of the roadway of any street, avenue, lane, alley, court or place, or any portion of any sidewalk, in the city and county, none of which has been accepted by the Supervisors as in this chapter provided, shall be so out of repair as to endanger persons or property passing thereon, or so as to interfere with the public convenience in the use thereof, the Board of Public Works shall require the owners or occupants of lots or portions of lots fronting on said portion of said

street, avenue alley, lane, court or place, by notice in writing, to be delivered to them or their agents personally, to repair forthwith said portion of said street, avenue, lane, alley, court or place, to the centre line thereof, in front of the property of which he is the owner or tenant, or occupant. The board shall particularly specify in said notice what work is required to be done and what material shall be used in said repairs. If said repairs be not begun within five days after notice given as aforesaid, and diligently and without interruption prosecuted to completion, the board may make such repairs, or enter into a contract with any suitable person, at the expense of the owner, tenant, or occupant, after the specifications for the doing of said work shall have been conspicuously posted by it in its office for three days, inviting bids for the doing of said work. Said bids shall be delivered to it at its office on or before the second day after the completion of said posting, and opened by it on the next day following: whereupon the contract shall be awarded to the lowest responsible bidder.

All of said bids shall be preserved in the office of the board, and shall be open at all times after the letting of the contract to the inspection of all persons; and such owner, tenant, or occupant, shall be liable to pay said contract price. Such work shall be commenced within twenty-four hours after the contract shall have been signed, and completed without delay to the satisfaction of the board. Upon the completion of such repairs by the contractor as aforesaid to the satisfaction of the board, it shall make and deliver to the contractor a certificate to the effect that such repairs have been properly made by said contractor to the grade, and that the

charges for the same are reasonable and just, and that the Board of Public Works has accepted the same.

The Legislature may provide that the owner of lots shall keep the street in front of them in repair. Hart v. Gaven, 12 Cal. 476.

SEC. 17. If the expense of the work and material for the repairs provided for in the last preceding section be not paid on demand to the contractor so employed, or his agent or assignee, said contractor, or his assignee, shall have the right to sue such owner, tenant, or occupant for the amount contracted to be paid; and the certificate provided for in said section shall be *prima facie* evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the Board of Public Works in a book kept by it in the office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien as in case of other assessments provided for in this chapter.

Certificate *prima facie* evidence: see note to sec. 15 of this chapter.

Lien: see note to sec. 12 of this chapter.

Demand: see note to sec. 12 of this chapter.

Action on: see note to sec. 15 of this chapter, and Hart v. Gaven, 12 Cal. 476.

SEC. 18. In addition to the remedies above given the Supervisors may prescribe the penalties that shall be incurred by any owner or person neglecting or refusing to make repairs when required, as hereinbefore provided. Such penalties shall be enforced for the use of the city and county by prosecution in the name of the People of the State of California in the court having

jurisdiction thereof, and may be applied in the case of fines, to the payment of expense of any such repairs not otherwise provided for.

Validity of penalty for failure to make repairs: *Hart v. Gaven*, 12 Cal. 476.

SEC. 19. The person owning the fee, or the mortgagee of such fee, or the person who, on the day the action is commenced, appears by deed duly recorded in the County Recorder's office of the city and county, to have the legal title to the land, or the person in possession of lands, lots, portion of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as executor, administrator or guardian of the owner, shall be regarded, treated and deemed to be the "owner" for all the purposes of this chapter. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Owner: see note to sec. 15 of this chapter, tit. "Parties," and note to sec. 7 of this chapter, tit. "To Whom Assessed."

As to tenant, see *Himmelmänn v. Townsend*, 49 Cal. 150.

SEC. 20. Any tenant or lessee of any lot of land on which has been imposed an assessment under the provisions of this chapter may pay said assessment, or he may discharge any liability imposed thereon by virtue of the provisions of this chapter, or he may redeem the property within the time prescribed by law, if legally sold on execution, and may deduct the amount so paid from the rents due and to become due from him; and he shall have a lien upon, and may retain possession of, said

lots until the amount so paid and advanced, with legal interest thereon, be satisfied from accruing rents or by payment by the owner.

As to the right to redeem, see: Code of Civil Procedure, secs. 700-706; *Hubbell v. Campbell*, 56 Cal. 527.

SEC. 21. The records kept by the Board of Public Works shall have the same force and effect as other public records, and duly certified copies therefrom may be used in evidence with the same effect as the originals. Said records shall, during all office hours, be open, free of charge, to the inspection of any citizen wishing to examine them.

SEC. 22. Notices in writing required to be given by the board may be served by any person over the age of twenty-one years, and the fact of such service may be verified by the oath of the person making it. Such oath may be taken before the secretary of said board or before any member thereof.

SEC. 23. When any street or portion of a street has been or shall hereafter be fully constructed to the satisfaction of the Board of Public Works and of the Supervisors, and is in good condition throughout, and a sewer, gas pipes, and water pipes are properly laid therein, the same shall be accepted by the Supervisors by ordinance; and thereafter such street or portion of a street shall be kept in repair and improved by the city and county. The Supervisors shall not accept any portion of a street less than the entire width of the roadway including the curbing, and one block in length, or one entire crossing; but they may partly or conditionally accept any street,

without a sewer or gas pipes or water pipes therein, if the ordinance of acceptance expressly states that they deem such sewer, or gas pipes or water pipes to be then unnecessary. In such case the lots of land previously or at any time assessable for the cost of constructing a sewer shall remain and be assessable for such cost and for the cost of repairs and restoration of the street damaged in said construction, whenever the Supervisors shall deem a sewer to be necessary and shall order it to be constructed. The Board of Public Works shall keep in its office a register of all streets accepted by the Supervisors under this section, which register shall be indexed for easy reference thereto.

Acceptance of streets.—Where an ordinance provided that no street should be accepted until it was “sewered with brick and paved and curbed with stone,” it was held that this did not require that the sidewalk should be sewered with brick, and paved and curbed with stone. *Phelan v. San Francisco*, 62 Cal. 44.

The acceptance of a portion of a street does not obligate the city to pay assessments for the opening and improvement of other portions of the same street. *San Francisco v. Real Estate*, 42 Cal. 513.

An acceptance of work done on a street is not sufficient to make the street an accepted street. *Oakland P. Co. v. Rier*, 52 Cal. 270.

After the acceptance of a street the city may still let a contract for its improvement. *Flickinger v. Fay*, 119 Cal. 590.

SEC. 24. The Board of Public Works may at any time, without any application therefor, recommend to the Supervisors to order the paving or macadamizing of the portion of any street required by law to be paved or macadamized by the person, company or corporation

having railroad tracks thereon. Upon such recommendation the Supervisors shall by ordinance order said work to be done and direct said board to notify said person, company, or corporation of the fact of the passage of such ordinance.

The secretary of said board shall thereupon forthwith in writing notify said person, company or corporation of the passage of said ordinance; and if said person, company or corporation shall not within ten days after receiving said notice commence in good faith to do said work and prosecute the same diligently to completion, the board shall invite sealed proposals for doing said work in the manner provided in this article; and all the provisions of this article in regard to such proposals, to the awarding of contracts, to the execution of contracts, and to the doing of public work, shall apply to all similar proceedings taken under this section. On the completion of the work to the satisfaction of the board the contractor shall be entitled to recover from such person, company or corporation the contract price for the expense of said work, together with incidental expenses, in an action instituted in a court of competent jurisdiction. On the trial of such action, the certificate of the board of the completion of said work to its satisfaction shall be *prima facie* evidence of the regularity of all the proceedings prior thereto and of plaintiff's right to recover in said action.

Assessment upon street railways.—The interest of a street railway in a street is an interest in real property, and capable of being enhanced in value by the widening of a street. *Appeal of North Beach etc. R. R. Co.*, 32 Cal. 499.

As to the validity of the provision making the assessment a lien upon "the road-bed, rolling stock, franchise, and other

property " of the company, see Appeal of North Beach etc. R. R. Co., 32 Cal. 499, 520.

The act of March 18, 1885, (Stats. 1885, 147), does not provide any mode for collecting from a street-railroad corporation whose road occupies a portion of the street any portion of the expense of improving the street. Schmidt v. Market Street etc. R. R. Co., 90 Cal. 37.

The act of February 27, 1893, (Stats. 1893, 33), sec. 6, attempts to provide the machinery for the collection of such assessment, but it is doubtful whether the provision is valid, since it is not expressed in the title of the act.

The act of April 2, 1866, (Stats. 1865-6, 849), provided that street-railroad companies should keep the "space between the rails" in repair. Under this act it was held that the company was under no obligation to repair the street between the "tracks," but only between the "rails." Robbins v. Omnibus R. R. Co., 32 Cal. 472.

The same mode of collecting a street assessment as is employed against property-owners, may be employed against a street-railway company. Schmidt v. Market Street etc. R. R. Co., 90 Cal. 37.

The only liability of a street-railway company to plank, pave and macadamize the street is found in this charter and section 498 of the Civil Code, which provides that this shall be a condition of the franchise. This section of the code requires the company to keep the portion of the street between the tracks and between the rails, and two feet on each side of the rails, in repair. The act of March 29, 1870, (Stats. 1869-70, 481), sec. 2, made it the duty of the street-railway company to make the same repairs as are provided for by section 498 of the Civil Code.

Neither this act nor the Civil Code provides that any portion of the expense incurred under a contract with the municipal authorities shall be assessed to the railway company. McVerry v. Boyd, 89 Cal. 304.

Section 8, subdiv. 3, of this chapter provides that the expense which the railway company is by law required to pay shall be included in the assessment. This provision is valid. Schmidt v. Market Street etc. R. R. Co., 90 Cal. 37.

Certificate to be *prima facie* evidence, see note to sec. 15 of this chapter.

SEC. 25. Except as otherwise in this chapter specifically provided, no ordinance for the improvement of any street other than for sewers, sidewalks and curbs, except for the improvement of the streets constituting or lying along the water front of the city and county, and except for such work as is provided for in the next preceding section, shall be passed by the Supervisors without extending said improvement throughout the whole width of such street.

SEC. 26. Wherever in this article the word "street" occurs, it shall be held to include all streets, lanes, alleys, places and courts which have been, or may be hereafter, dedicated and open to public use, and whose grade and width have been legally established; and the grade of all intermediate or intersecting streets in any one block shall be deemed to conform to the grades as established at the crossings of the main streets.

The word "improvement" shall be held to include grading, paving, planking, macadamizing, piling and capping; and the construction and repairs of sewers, cesspools, manholes, culverts, drains, sidewalks and curbs.

The term "main street" shall mean such street or streets as bound a block, and the term "street" shall include crossing.

The word "block" shall mean the blocks known or designated as such upon the maps and books of the Assessor.

The term "quarter block," as used in this chapter as

to irregular blocks, shall be deemed to include all lots or portions of lots, having any frontage on either intersecting street half way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city and county.

The word "paved" shall include any pavement of stone, iron, wood, or other material which the Supervisors may by ordinance order to be used; but no patented pavement shall be ordered during the existence of the patent therefor, until the owner of such patent shall have transferred to the city and county all right to the use of the same therein, with the privilege to any person to manufacture and lay the same upon its streets under any contract that may be awarded to him, or entered into by him with the city and county.

The term "expense" shall include the price at which the contract was awarded, and the term "incidental expenses" shall include all expenses incurred in printing and advertising the work contracted for, and all expenses for surveying, measuring and inspecting the work.

All notices and resolutions required in this article to be published shall be published daily, legal holidays excepted, in the official newspaper.

All notices herein required to be served, whether by delivery, mailing or posting, may be so served by any male citizen of the age of twenty-one years, and his affidavit thereof shall be prima facie evidence of such service. The affidavit by the publisher of the official newspaper, or his clerk, of the publication of any notice required in this article to be published, shall be prima facie evidence of such publication.

Public streets.—East Street is one of the public streets of the City and County of San Francisco. *Barton v. McDonald*, 81 Cal. 265.

The mere fact that a street is laid down on the map of the city does not conclusively prove that it is a public street. *Whelan v. Boyd*, 93 Cal. 500; *People v. Sperry*, 116 Cal. 593.

As to whether a sidewalk is part of the "street," see: *Phelan v. San Francisco*, 62 Cal. 44; *Himmelmann v. Satterlee*, 50 Cal. 68; *Dyer v. Chase*, 52 Cal. 440.

No recovery can be had for street-work on property not dedicated as a public street. *Cook v. Sudden*, 94 Cal. 443; *Spaulding v. Bradley*, 79 Cal. 449; *Spaulding v. Wesson*, 115 Cal. 441.

As to public streets in general in San Francisco, see: *Diggins v. Hartshorne*, 108 Cal. 154; *San Francisco v. Burr*, 108 Cal. 460.

Grade of streets.—The power to lay out, open, and grade streets carries with it the power to establish the grade of such streets. *Himmelmann v. Hoadley*, 44 Cal. 213.

The grade of streets may be established by a general ordinance. *Napa v. Easterby*, 76 Cal. 222.

A statute fixing grades of certain streets at their points of intersection, fixes the grade at all intermediate points by connecting the named points by a straight line. *Gafney v. San Francisco*, 72 Cal. 146. But see *Dorland v. Bergson*, 78 Cal. 637.

A certificate of the county surveyor that he "finds curbs on official grade and line," is sufficient to prove the establishment of the official grade of the street. *Dorland v. Bergson*, 78 Cal. 637. But see *Chambers v. Satterlee*, 40 Cal. 497.

As to the change of grade of streets, see: Act of April 1, 1878, (Stats. 1877-8, 915); Act of March 28, 1868, (Stats. 1867-8, 463); Act of April 3, 1876, (Stats. 1875-6, 865); *Jennings v. Le Roy*, 63 Cal. 397; *People v. San Francisco*, 43 Cal. 91; *Montgomery Ave. Case*, 54 Cal. 579; *Appeal of Houghton*, 42 Cal. 35; *In re Beale Street*, 39 Cal. 495.

Macadamizing.—The word "macadamize" means to cover a street or road by the process introduced by Macadam, which consists of the use of small stones of a uniform size, consoli-

dated and leveled by heavy rollers. *Partridge v. Lucas*, 99 Cal. 519.

Under an order to macadamize, rock gutter-ways may be constructed. *Burk v. Altschul*, 66 Cal. 533.

Macadamizing does not include curbing. *Beaudry v. Valdez*, 32 Cal. 269.

Macadamizing a street does not include the construction of sidewalks. *Himmelmann v. Satterlee*, 50 Cal. 68; *Dyer v. Chase*, 52 Cal. 440.

Lifting the rock on the roadway, and relaying a part with new rock is "additional macadamizing." *Oakland P. Co. v. Rier*, 52 Cal. 270.

Incidental expenses.—An item for engineering work is properly included in the "incidental expenses." *McDonald v. Conniff*, 99 Cal. 386.

Expenses incurred under a former abandoned resolution can not be considered as any part of the "incidental expenses." *Fitzhugh v. Ashworth*, 119 Cal. 393.

As to the meaning of the term as used in the act of April 1, 1872, (Stats. 1871-2, 804), see *Deady v. Townsend*, 57 Cal. 298.

As to the publication of the resolution, see sec. 3 of this chapter.

As to the effect of the affidavit of service, see sec. 13 of this chapter, tit. "The Return."

As to the meaning of the term "quarter-block," see *Martin v. Wagner*, 120 Cal. 623.

SEC. 27. When the owners of all the lands fronting upon any street which is less than forty feet in width, for the entire distance of said street, or for the distance of one or more entire blocks, shall petition the Board of Public Works that the said street, or that portion thereof upon which said lands front, be closed, the board may pass a resolution recommending that the same be closed. Before passing such resolution the board shall cause a notice of the application to be published in the official

newspaper, and shall fix a time and place at which it will consider the same and hear objections thereto. Upon such hearing it shall determine whether it will recommend that the street be closed; and if it shall so determine, it shall transmit such recommendation to the Supervisors. Thereupon the Supervisors may pass an ordinance that the street be closed; and that the same shall not thereafter be, or be deemed to be, a public street, or subject to any public expense or improvement; and the land theretofore included within the roadway and sidewalks of said street shall thereafter be the property of the city and county. No such ordinance shall be passed until the petitioners shall have paid all the expenses of said proceedings.

Closing of streets.—The Legislature has power to vacate a street in a city, and may delegate its power to the municipal authorities. *Brook v. Horton*, 68 Cal. 554; *Polack v. San Francisco O. A.*, 48 Cal. 490.

The Legislature may vacate a portion of a street, even though a person owns property fronting on another portion of the street which will incidentally be injured thereby. *Polack v. San Francisco O. A.*, 48 Cal. 490. But see *Bigelow v. Ballerino*, 111 Cal. 559.

The municipal authorities cannot vacate a street without the consent of the Legislature. *Polack v. San Francisco O. A.*, 48 Cal. 490; *San Francisco v. Burr*, 108 Cal. 460.

As to what will amount to an abandonment of a street, see: *Eureka v. Armstrong*, 83 Cal. 623; *Brook v. Horton*, 68 Cal. 554; *Los Angeles v. Cohn*, 101 Cal. 373.

The Legislature having conferred upon boards of supervisors the power to close streets, the determination by the board that the public interest requires a street to be closed, is conclusive and not open to review by the courts. *Symons v. San Francisco*, 115 Cal. 555.

SEC. 28. In all cases where lands in the city and county shall be hereafter subdivided and laid out into blocks or plats, sub-lots, streets and alleys, or when new streets or public grounds shall be laid out, opened, donated or granted to the public by any proprietor, the map or plat thereof shall be submitted to the Board of Public Works for its approval, and if the board approve the same, such approval shall be by it indorsed upon the said map or plat, and said map with said approval shall then be filed in the office of the Recorder; and without such approval indorsed thereon no such map or plat shall be filed in the office of the Recorder, or have any validity; nor shall any street, alley, or public ground hereafter opened and dedicated as such, become or be a public street or be subject to any public improvement or expense without such approval, indorsement and record. No street hereafter laid out shall be approved or become a public street unless the same shall be at least forty feet in width and two hundred feet distant from any parallel street.

SEC. 29. The board shall annually invite proposals for cleaning and sprinkling such of the streets of the city and county as the board shall determine should be cleaned and sprinkled at the public expense. Before causing notice for such proposals to be published the board shall divide the city and county into such number of districts as in its judgment will best induce competition for bids, and secure the cleaning and sprinkling of the streets at the lowest cost. The secretary of the board shall, under its direction, on the first Monday in May of each year, cause to be published for a period of ten days

a notice inviting proposals for cleaning and sprinkling each of said districts, specifying in said notice the streets of each district which are to be cleaned and sprinkled, the number of times a week that they are to be cleaned and sprinkled, and the amount of security to be given with each contract. Bids shall be made for each district separately. All the provisions of this article in relation to the making and opening of bids, awarding of contracts and entering into and performance of contracts, shall be applicable to said contracts.

The board may, at the time it invites proposals for said cleaning and for said sprinkling, also invite proposals for said cleaning separately and for said sprinkling separately, and may award such contracts accordingly as may be for the best interest of the city and county.

The board may also, with the consent of the Supervisors expressed by ordinance, purchase one or more machines for sweeping the streets, and may enter into contracts for sweeping the streets with said machines; but the board must give the preference to hand-sweeping so far as it can do so with reference to the proper sweeping of the streets and to the funds at its disposal.

SEC. 30. The board shall cause to be made all urgent repairs upon the public streets that may from time to time be requisite for the public safety, and for that purpose may employ such laborers as may be necessary, and at such wages as may be from time to time fixed by the board; but when the expense of the repairs upon any street or portion of a street shall exceed the sum of five hundred dollars, exclusive of materials to be furnished

from the corporation store yard, the same shall be done under contract awarded in the manner provided in this article.

SEC. 31. The board shall, from time to time, after it shall have been directed so to do by the Supervisors by ordinance, invite proposals for supplying to the city and county such materials as may be required for the repair of the public streets or for any improvement thereof, and such proceedings shall be had in awarding the contracts therefor as are in this article provided for awarding other contracts.

SEC. 32. The Supervisors shall select some place in the city and county which shall be known as the corporation store yard, wherein shall be kept all supplies, material, implements and machines belonging to the city and county, to be used in repairing or cleaning and sprinkling the streets or for any improvement thereon. The Board of Public Works shall appoint a storekeeper for said yard who shall hold his office during its pleasure. He shall have the custody of said yard and of all the supplies, material and implements therein, and shall keep books of account in which shall be kept a systematic account of all purchases, and of the receipt of supplies and material under any contracts awarded under the provisions of the preceding section, and of the delivery thereof, which books shall at all times show the amount of said material and supplies on hand and in store, and when, to whom, and for what purpose each article was delivered. He shall be responsible for all material and supplies in said yard, and shall not deliver

any article except upon the written order or requisition of the president and secretary of the Board of Public Works, and he shall take the written receipt, indorsed upon said order, of each person to whom any delivery is made, specifying the date of such delivery and the amount and kind of material and supplies delivered. For any deficiency in his accounts or for the delivery of any article without such order or requisition and receipt, he shall be liable upon his official bond. All cobble stones, or stone blocks or other material with which any street or portion of a street may have been paved or planked shall, if at any time removed from said street, be taken to said yard, and there kept, accounted for and disposed of by the storekeeper in the same manner as other supplies.

CHAPTER III.

Opening, Straightening, Widening, Extending and Changing the Grade of Streets.

SECTION 1. When an application shall be made to the Board of Public Works for the straightening, widening or extending of any street, or for the laying out, establishing or opening of a new street, signed by the owners of a majority of the frontage of the lands upon the line of said street, or proposed street, and such improvement requires the condemnation of private property, and the board shall by resolution determine that the improvement would be of public benefit, it shall make an estimate of the expense of such improvement, and determine by resolution the district which will be affected by,

and should be assessed for, the expense of such improvement. No proceedings shall be had upon the filing of such petition until after the persons signing the same shall have deposited with the secretary of the board an amount of money which, as may be determined by the board, will be sufficient to defray all the expense that may be incurred in case the Supervisors shall not pass an ordinance for said improvement.

Opening, etc., of streets.—The matter of the opening of streets was provided for in the charter of the City of San Francisco; Act of April 15, 1850, (Stats. 1850, 223), art. IV; and by the Consolidation Act, (Stats. 1856, 145), art. IV. The authority of the city and county as to the opening of streets was increased by the act of April 25, 1863, (Stats. 1863, 560). Several special acts for the opening of particular streets in the city and county were also passed, notably the acts to open Montgomery Avenue, [Act of March 29, 1870, (Stats. 1869-70, 484) and Act of April 1, 1872, (Stats. 1871-2, 911)], which were passed upon in *Mulligan v. Smith*, 59 Cal. 206, and *Kahn v. Supervisors*, 79 Cal. 388; and the act to widen Dupont Street, [Act of March 23, 1876, (Stats. 1875-6, 433)], which was passed upon in *Lent v. Tillson*, 72 Cal. 404.

The act of April 25, 1863, (Stats. 1863, 560), provided a complete system for the opening of streets in the City and County of San Francisco.

The act of March 6, 1889, (Stats. 1889, 70), in turn provided a general system for the opening of streets in municipalities throughout the state. This act was repealed as to cities of over 40,000 inhabitants by the act of March 23, 1893, (Stats. 1893, 220), provided the latter act is constitutional. The act is believed to be unconstitutional as it is a special law within the meaning of art. IV, sec. 25, subdiv. 7, of the Constitution, in that it applies only to cities of over 40,000 inhabitants, which is not a class authorized by the Constitution.

The act of April 25, 1863, (Stats. 1863, 560), was not repealed by the Political Code, the new Constitution, nor by any act prior

to the general act of 1889, and proceedings commenced under that act might be completed under the act of 1889. *San Francisco v. Kiernan*, 98 Cal. 614.

The constitutionality of the act of 1889 was attacked on the following grounds, all of which were decided in favor of the constitutionality of the act in the case of *Davies v. Los Angeles*, 86 Cal. 37:

1. That the subject of the assessment of property of persons within the assessment district was not included in the title of the act.

2. That notice by posting does not afford due process of law.

3. That it authorizes an assessment for benefits, while the improvement supposed to confer the benefits is hypothetical, and may be incapable of realization.

4. That it admits of an assessment for benefits largely in excess of the amount needed for the improvement.

5. That it provides for the assessment by commissioners of the value of the property taken.

6. That it delegates to a special commission the power to perform municipal functions.

The power to open streets does not include the power to grade and gravel the street opened. *Wilcoxon v. San Luis Obispo*, 101 Cal. 508.

Is the opening of streets a municipal affair?—It has been held that the provision of the freeholders' charter of the City of Los Angeles as to the opening of streets is subject to the general law of 1889 on that subject. *Davies v. Los Angeles*, 86 Cal. 37. This, however, was before the amendment to section 6 of article XI, of the Constitution, exempting such charters from the provisions of the general laws in "municipal affairs." It, therefore, follows that unless the opening of streets is a "municipal affair," this matter will still be governed by the act of 1889, and not by the charter. (See Intro., p. 19.) The following cases bear upon the subject as to whether or not it is a "municipal affair":

It was held in *Sinton v. Ashbury*, 41 Cal. 525, that the opening of Montgomery Avenue in the City and County of San

Francisco was a *municipal*, as distinguished from a *private*, purpose.

In *De Witt v. Duncan*, 46 Cal. 343, it was said: "The power to lay out or change streets is in its nature *legislative*, and not judicial. The Legislature may itself perform those acts, or it may select such agencies for that purpose as it deems proper. Usually the requisite powers are conferred upon the authorities of the municipal government."

In the case of *Davies v. Los Angeles*, 86 Cal. 37, 49, the court refused to decide the point as to whether or not the matter was a municipal function. See further: *Thomason v. Ruggles*, 69 Cal. 465, 472; *South Pasadena v. Terminal R'y Co.*, 109 Cal. 315, 322; *San Francisco v. Spring V. W. W.*, 48 Cal. 493, 529; *Montgomery v. Santa A. W. R'y Co.*, 104 Cal. 186, 197; *New Orleans etc. R. R. Co. v. New Orleans*, 44 La. Ann. 748; *Chicago etc. R. R. Co. v. Joliet*, 79 Ill. 25, 34; *Atlanta v. Gate City etc. Co.*, 71 Ga. 106, 124.

District to be assessed.—It is a matter of legislative discretion as to what district shall be assessed for the improvement. *Sinton v. Ashbury*, 41 Cal. 525.

The action of the board in passing the resolution of intention and fixing the boundaries of the district is legislative in its character. *Wulzen v. San Francisco*, 101 Cal. 15.

An ordinance which provides that the exterior boundaries of the district of land to be benefited are "all lots and parcels of land fronting on each side of First Street, from the west side of Los Angeles Street to the west side of Alameda Street," is insufficient. *Dehail v. Morford*, 95 Cal. 457.

As to the resolution of intention, see note to sec. 3 of chapter II of this article.

As to the petition, see sec. 2 of this chapter.

Public benefit.—The action of a city council in ordering the opening of a street, after the steps provided by statute have been taken, and the resolution and ordinance ordering the work have been regularly adopted, is final and conclusive of the necessity of the improvement. *Santa Ana v. Harlin*, 99 Cal. 538.

SEC. 2. If within three months after the passage of the resolution determining such district, a majority of the owners of the land within said district who shall also be the owners of two-thirds of the superficial square feet of the property included within said district, and of three-fourths in value of said property—including improvements thereon—estimating said value according to the last preceding assessment book of the city and county, shall present to the board a petition for said improvement, verified by their oaths and describing the lands of which they are the owners, and showing the amount at which the same was assessed upon the last preceding assessment book of the city and county, and stating that they are the owners and in possession of the lands named in said petition, the board shall pass a resolution of its intention to recommend such improvement to the Supervisors, and shall in such resolution specify a day upon which it will hear any objections that may be made to such improvement.

Before passing such resolution of intention, the board shall cause to be prepared a map or diagram of the district affected by and to be assessed for the expense of such improvement, upon which shall be delineated the several lots of land upon which said assessment is to be levied, and also the lots of land which are to be taken for such improvement, and showing the name of the person to whom the said lots were assessed upon the last assessment book of the city and county, together with the amounts of such assessments.

The petition.—The petition or application is absolutely essential to give the board jurisdiction to proceed with the work. *Dyer v. North*, 44 Cal. 157; *Turrill v. Grattan*, 52 Cal. 97;

Gately v. Leviston, 63 Cal. 365; Dyer v. Miller, 58 Cal. 585; Spaulding v. North S. F. H. & R. R. Ass'n, 87 Cal. 40; Mulligan v. Smith, 59 Cal. 206; Kahn v. San Francisco, 79 Cal. 388.

Every requirement of the statute which may in any manner benefit the owner must be observed in order to give jurisdiction to the municipality to make the improvement. Dehail v. Morford, 95 Cal. 457.

There is no substantial difference in this regard between the absence of a petition and a petition lacking the essential averments. Turrill v. Grattan, 52 Cal. 97.

The petition must be signed by the owner, and the signature of executors, administrators, or agents, is insufficient. Mulligan v. Smith, 59 Cal. 225.

So the signature of the president or secretary of a corporation is insufficient. Mulligan v. Smith, 59 Cal. 206, 225.

So the signature of a tenant in common does not affect the interest of his co-tenant. Mulligan v. Smith, 59 Cal. 206, 226.

Under the Montgomery Avenue Act, it was held that the petition must be signed by the persons whose names appear on the last assessment-roll as the owners. Kahn v. San Francisco, 79 Cal. 388.

The petition must contain everything required by the statute. In re Grove Street, 61 Cal. 438.

The decision of the board upon the petition is not conclusive that it was properly signed. In re Grove Street, 61 Cal. 438; Mulligan v. Smith, 59 Cal. 206, 234; Kahn v. San Francisco, 79 Cal. 388.

SEC. 3. The secretary of the board shall thereupon cause said resolution of intention to be published for a period of thirty days, non-judicial days excepted, and shall also cause a copy of said resolution to be deposited, postage prepaid, in the post office at the city and county, addressed to each person whose name is delineated upon said map, at least ten days before the day named for hearing objections thereto.

The notice.—The Legislature has the right to say what notice shall be given, so long as the notice is reasonable, and the proceeding is not arbitrary, oppressive, or unjust. *Davies v. Los Angeles*, 86 Cal. 37.

Constructive notice by publication and posting is sufficient. *Lent v. Tillson*, 72 Cal. 404, 413; *Scott v. Toledo*, 36 Fed. 385, 396; *Davies v. Los Angeles*, 86 Cal. 37.

SEC. 4. At any time before the day fixed in such resolution for hearing objections to such improvement, any person interested therein may file with the secretary of the board his objections thereto, briefly stating the grounds thereof and the nature of his interest; and upon the day fixed for hearing the same, or some day to which the hearing thereof shall then be postponed, the board shall proceed to hear and determine the sufficiency of any objections which may have been filed.

Objections.—As to the effect of a remonstrance to the improvement, see note to sec. 4, of chapter I, of this article.

The fact that a property-owner objected to the improvement does not operate as a waiver of his right to object to want of jurisdiction in the council over the subject-matter of the improvement. *Dehail v. Morford*, 95 Cal. 457.

SEC. 5. If the board shall determine that such objections are sufficient to prevent a recommendation of the improvement, it shall pass a resolution to that effect, and no further proceedings shall be had under said petition. If no objections have been filed, or if the board shall determine that the objections filed are insufficient, it may pass a resolution recommending to the Supervisors said improvement, and in its recommendation shall specially report to the Supervisors whether in its opinion the land within the district specified as affected by

said improvement will be benefited to the extent of the expense of said improvement.

SEC. 6. If the board shall pass a resolution recommending said improvement, the secretary shall forthwith transmit to the Clerk of the Supervisors a copy of said resolution, together with the petition, map, estimate of the expense of said improvement, and any objections that may have been filed; and the Supervisors shall at their first regular meeting thereafter, or at any meeting to which said hearing may have been adjourned, pass upon said recommendation, and may by resolution adopt or reject the same. If said recommendation is rejected no further action shall be had thereon or upon said petition. If the Supervisors shall adopt said recommendation, they shall within thirty days thereafter pass an ordinance providing for said improvement, and may in said ordinance prescribe such rules for the conduct of the Board of Public Works respecting the assessment and valuation to be made by said board, and providing for the condemnation of said lands, and the collection of said assessment, in addition to, and not inconsistent with, the rules herein prescribed, as to said Supervisors shall seem expedient. Upon the passage of said ordinance the Clerk of the Supervisors shall transmit a certified copy thereof to the Board of Public Works.

SEC. 7. Upon the receipt by the board of a certified copy of said ordinance the board shall cause to be made an accurate survey of the contemplated improvement, and a map thereof, upon which shall be delineated each and every lot of land to be taken or appropriated for the

purposes of the intended improvement, showing its extent in feet and inches, and also each and every lot of land within the district determined to be affected by, and which is to be assessed for, the cost and expense of said improvement. After said survey and map are made the board shall pass a resolution fixing a day on or after which it will proceed to value the several lots of land to be taken for the purpose of the intended improvement, and ascertain and determine the damages and benefits which may result therefrom.

The secretary of the board shall cause said resolution to be published for a period of ten days before the day fixed in said resolution for proceeding to make said valuation.

In estimating the damage to any lot by reason of any portion of said lot having been taken for public use, as herein provided, the measure of damage to said lot shall be the difference at the time of said appropriation between the value of said lot in its entirety and its value as reduced in size by the appropriation of a part thereof to said public use. The expense of the improvement shall include the value of the land taken, with the improvements, if any, thereon, and the expense of the proceedings for its appropriation or condemnation.

SEC. 8. On the day named in said notice and upon such other days as the matter may be continued to, from time to time, the board shall proceed to value the several parcels of land necessary to be taken for the purpose of the intended improvement. Such value shall be ascertained as of the time of said inquiry, independently of any appreciation or depreciation that may be caused to the same by reason of such intended improvement, and

the board shall fix such valuation as the amount to be given to the owners therefor. The board shall also assess the benefits and damages which may result from the contemplated improvement of the lands within said district, and shall distribute the total value of all the lands and improvements taken, together with the damages, if any, caused by said improvement to the adjacent lands, and the estimated cost and expense of said improvement, in the form of an assessment upon each and every lot of land within the district determined to be affected by said improvement in proportion to the benefits which the board shall determine will be received by said lots and lands.

SEC. 9. The meetings of the board, when engaged in making said valuation and assessment, shall be public and held at the office of the board, and all persons interested in such valuation and assessment shall have the right to be present and be heard in person or by counsel. All persons claiming any interest in the lands to be taken for said improvement, or that will be damaged thereby, are required at or during such hearing, to file with the board, plats, and a description of their respective lots of land.

SEC. 10. In making said assessment and valuation the commissioners shall act as a board, and said assessment and valuation shall be authenticated by the signatures of said commissioners, and every assessment and valuation so authenticated and recorded in the book of assessments for condemnation shall be *prima facie* evidence of the correctness and regularity of all the pro-

ceedings of said board and of the Supervisors prior to the date of such record.

SEC. 11. In determining the valuation of the property which is taken for said improvement the board shall in its report set forth, under appropriate headings, a brief description of each lot thereof, the amount allowed for the same, the name of the owner of each lot, when known (and if unknown, that fact shall be stated), and the name of any claimant thereto, or to any interest therein; and in making the assessment for the expense of said improvement the board shall set forth in the assessment, under appropriate headings, a brief description of each lot assessed, the amount assessed against the same, the person to whom said property was assessed upon the next preceding assessment book of the city and county, the owner thereof, if known (and if unknown, that fact shall be stated), and the total amount of the expense of said improvement.

SEC. 12. Upon the completion of said valuation and assessment, the board shall cause to be published for ten days a notice of the completion of said assessment and valuation, notifying all parties therein to examine the same; and for that purpose said assessment, valuation and map shall be open and exhibited to public inspection at the office of the board for thirty days after the first publication of said notice. During said period of thirty days, but not thereafter, the board may alter, change or modify said assessment. Upon the expiration of said thirty days it shall complete the same in the form of a report and schedule, embracing the value of the lands taken and the assessment of said value, together with

the expense of the improvement, as hereinbefore provided, upon the several lots of land embraced within the aforesaid district. Said report and schedule shall, within sixty days after the first publication of the last mentioned notice, be filed in the office of the County Clerk, together with a petition signed by the president of said board, to the Superior Court, praying for a judgment of said court confirming the assessment contained therein against the respective lots therein described as assessed, and for the condemnation and conveyance to the city and county, upon the payment of the value thereof as ascertained by said report, of each of the lots of land alleged in said petition to be necessary to be taken for said improvement.

Condemnation.—As to the sufficiency of the petition for, see *Los Angeles v. Waldron*, 65 Cal. 283.

When the answer in the condemnation proceedings contains no allegation of any defect or irregularity in the proceedings of the council, there is no issue under which evidence is admissible. *Santa Ana v. Harlin*, 99 Cal. 538.

The decision of the board is conclusive of the question that the work is a public necessity. *Santa Ana v. Harlin*, 99 Cal. 538.

Property cannot be taken without compensation. *Gunter v. Geary*, 1 Cal. 462.

The question of dedication is not in issue in a proceeding for condemnation. *San Jose v. Freyschlag*, 56 Cal. 8; *San Jose v. Reed*, 65 Cal. 241.

The power to condemn land is judicial, and cannot be exercised by the board of supervisors. *Wulzen v. San Francisco*, 101 Cal. 15.

SEC. 13. On filing such petition, and upon application to said court, the presiding judge thereof shall appoint some day, not less than ten nor more than thirty

days thereafter, as the time when any objections to the confirmation of said report will be heard by said court. The clerk of said court shall thereupon cause to be published for ten days in the official newspaper, a notice of the filing of said report and of the day assigned for the hearing of any objections that may be made thereto. Any party interested therein may at any time before the day assigned for the hearing thereof file in said court his objections in writing to the confirmation of the same, specifying his objections; and all objections not specified shall be deemed waived. Upon the day fixed in said order said court shall proceed to the hearing of any objections that may have been filed to the confirmation of said report. Upon proof of publication of said notice said court shall have and take jurisdiction of said report and of the subject matter thereof as a special proceeding; and upon said day and at any other time or times to which said hearing may be adjourned may hear the allegations of the parties and proofs adduced in support of the same, and may confirm said report, or change, alter or modify the same, or cause the same to be changed, altered or modified by said board. Said judgment of confirmation shall be a lien upon each lot of land described in said report for the amount assessed against the same, and shall provide for the conveyance to the city and county of each and every of the lots of land declared necessary for the purpose of said improvement, upon the payment of the value thereof as fixed by such judgment. Said lien shall remain in force until said assessment is paid or legally discharged.

SEC. 14. Any person who has filed objections to the confirmation of said report may appeal from said judgment to the Supreme Court at any time within thirty days after the entry of such judgment. The amount of the undertaking on such appeal shall be fixed by said presiding judge and such undertaking shall be made payable to the city and county. For the purposes of such appeal the judgment roll of the proceedings in the Superior Court shall consist of the report, objections, judgment and bill of exceptions, or so much thereof as may be necessary to determine said appeal. If said judgment be reversed or modified the Superior Court shall take such proceedings as will cause said assessment and valuation to be made in accordance with the decision of the Supreme Court. The City Attorney shall act as the attorney for the Board of Public Works in proceedings under this chapter.

SEC. 15. After the confirmation of said report, if the time for appealing has expired, or if an appeal has been taken and the judgment appealed from has been affirmed, upon the application of the Board of Public Works the clerk of the Superior Court shall issue a certificate to that effect to said board; and said assessment shall then be recorded in the book of assessments for condemnation kept for that purpose, and the record thereof signed by the president and secretary of said board. The secretary shall then deliver to the Tax Collector the assessment so confirmed and recorded, together with said certificate of said clerk, and a warrant to the Tax Collector directing him to collect the said assessment. The Tax Collector shall, if any part of said assessment is not paid within twenty days after said

assessment, certificate and warrant shall have been delivered to him, give notice in the official newspaper by ten days' publication therein that he will, on a day and time certain, to be not more than ten days after the expiration of said publication, sell such of the lots of land on which the assessment thereon remains unpaid, describing each of said lots so delinquent, together with the amount of the assessment and costs due on each, and shall include as part of said costs five per centum on the amount due on each assessment so delinquent, as and for the expenses of said sale. He shall thereupon sell such lots pursuant to such notice. Redemption may be made from such sale within the time and in the manner and on the terms as on sales made under execution as provided in the Code of Civil Procedure of this state. If any amount remain in the hands of the Tax Collector as a result of the collection of said assessment beyond that necessary to make the compensation provided for in the next succeeding section, and to pay the necessary expenses of said sale, such surplus shall be paid by him proportionately to those whose land has been sold as aforesaid.

SEC. 16. Upon the report of the Tax Collector to the Supervisors that the amount of said assessment has been collected and paid into the treasury, the Supervisors shall order to be paid out of the treasury the sums fixed in said judgment as the compensation for the lands to be taken for said improvement; and upon the delivery to the Treasurer by any person entitled to receive compensation for any lot of land so taken, of a conveyance of said lot of land to the city and county, approved by

the City Attorney, and a certificate from the City Attorney that such person is entitled to the compensation for the lands described in said conveyance, the Treasurer shall pay to said person the amount awarded for said lot by said judgment of condemnation, after the demand therefor has been audited by the Auditor.

SEC. 17. If the owner of any of said lots or subdivisions neglect or refuse for ten days to make and deliver such conveyance, or be unable by reason of incapacity to make a good and sufficient conveyance thereof to the city and county, or if the City Attorney shall certify that the title to any of said lots is in dispute or uncertain, or that there are conflicting claimants to the amount awarded as compensation therefor, or to any part thereof, a warrant upon the treasury for the payment of the amount so awarded shall be by order of the Supervisors drawn by the president and secretary of the Board of Public Works, together with a certificate of the Treasurer indorsed thereon that the said warrant has been registered by him and that there are funds in the treasury set apart to pay the same, shall be deposited with the County Clerk; and thereupon, upon a petition to said presiding judge by the president of the said board, setting forth said facts, said judge shall issue an order *ex parte* directing the Sheriff to place said board in the possession of said land.

SEC. 18. At any time thereafter any claimant to said award, or any part thereof, may file his petition in said Superior Court against all parties in interest for an adjudication of all conflicting claims to the same, or for an order that the same be paid to him, and thereupon

such proceedings shall be had thereon as may be agreeable to law and equity. Upon entry of final judgment in such proceeding, the County Clerk shall, after said demand has been audited by the Auditor, collect the warrant and pay the proceeds to the person or persons named in said judgment as entitled thereto. It shall be provided in said judgment that before receiving the proceeds of said warrant said party, or some one authorized in his behalf, shall make and execute to said city and county and deliver to the County Clerk a sufficient conveyance of said lot of land. Immediately after taking possession of the land required for said street, the board shall report that fact to the Supervisors.

SEC. 19. If any member of the board be interested in any of the land to be taken or assessed for such improvement, the Mayor shall appoint, for the purpose of making the said assessment and valuation only, some competent person to act as one of the commissioners therefor, who shall possess the same qualifications as are provided for said commissioners, and who, before entering upon his duties, shall take the oath of office required of said commissioners, and enter into a bond for such amount as may be fixed by the Supervisors.

SEC. 20. The Supervisors may, on the written recommendation of the Board of Public Works, change the grade of any street or street crossing in the manner and to the grade set out in such recommendation; but no grade shall be changed unless the same proceedings are taken by way of providing compensation to those who may suffer damage by such change of grade, so far as such proceedings may be applicable, as are hereinbefore

provided in the matter of opening, straightening, widening and extending streets; and where such proceedings are not applicable they may be supplemented by ordinance of the Supervisors.

Grade of streets.—As to the power to grade streets, see: *Himmelmann v. Hoadley*, 44 Cal. 213; *Napa v. Easterby*, 76 Cal. 222.

As to the proof of the grade of streets, see: *Gaffney v. San Francisco*, 72 Cal. 146; *Dorland v. Bergson*, 78 Cal. 637; *Chambers v. Satterlee*, 40 Cal. 497.

Changing grade.—The act of April 1, 1878, changing the grade of Bay Street was constitutional, although no provision was made for compensation to owners of adjacent lots. *Jennings v. Le Roy*, 63 Cal. 397. See further: *People v. San Francisco*, 43 Cal. 91; *Montgomery Ave. Case*, 54 Cal. 579; *Appeal of Houghton*, 42 Cal. 35; *Matter of Beale Street*, 39 Cal. 495.

CHAPTER IV.

Sewers and Drainage.

SECTION 1. The Board of Public Works shall devise a general system of drainage, which shall embrace all matters relative to the thorough, systematic and effectual drainage of the city and county, and shall from time to time make to the Supervisors such recommendations upon the subject of sewerage and drainage as it may deem proper.

Sewers and drainage.—The matter of the construction and repair of sewers is regulated by the same laws as regulate the improvement of streets. See Chapter II of this article. See also Act of March 14, 1881, (Stats. 1881, 77).

As to the liability of cities for damage to property by the overflow of sewers, see: *Bloom v. San Francisco*, 64 Cal. 503; *Span-*

gler v. San Francisco, 84 Cal. 12; O'Hale v. Sacramento, 48 Cal. 212; Charter, art. I, sec. 5.

SEC. 2. The board shall prescribe the location, form and material to be used in the construction, reconstruction and repairing of all public sewers, manholes, sinks, drains, cesspools, and all other appurtenances belonging to the drainage system, and of every private drain or sewer emptying into a public sewer, and determine the place and manner of the connection.

SEC. 3. The board shall recommend to the Supervisors rules and regulations concerning the public and private sewers and drains in the city and county, and upon recommendation of said board, the Supervisors are authorized to pass an ordinance establishing the same and prescribing the penalties for any violation thereof.

SEC. 4. No person shall connect with, or open or penetrate, any public sewer or drain without first obtaining a permit in writing from said board, and complying with the rules and regulations of the board in reference thereto.

SEC. 5. The board may also recommend to the Supervisors the construction of such canals, sewers, tunnels, ditches, drains, embankments, reservoirs, pumping works, machinery and other works necessary for the proper and effectual drainage of the city and county, together with plans for connecting the same with sewers and private drains already constructed or thereafter to be constructed.

SEC. 6. The Supervisors may, upon the recommendation of the Board of Public Works, by ordinance passed by not less than fourteen affirmative votes, authorize the purchase of any personal property or the acquisition by purchase or condemnation of any real estate which may be necessary for the construction of any sewer or the making of any improvement provided for in this chapter.

SEC. 7. The board may, with the like approval of the Supervisors, agree with the owners of any real estate, upon which it is deemed desirable to construct any sewer or other improvement relative to sewerage or drainage, upon the amount of damage to be paid to such owners for the purpose of such improvement and for the perpetual use of said real estate for such purpose.

SEC. 8. The board may, when authorized by ordinance of the Supervisors passed by not less than fourteen affirmative votes, construct such sewers, reservoirs and pumping works as may be necessary to carry out the general system of sewerage for the city and county.

SEC. 9. When, upon the recommendation of the Board of Public Works, the Supervisors shall determine upon any improvement for the purpose of sewerage and drainage which necessitates the acquisition or condemnation of private property, and the board is unable to agree with the owner thereof, upon the amount of compensation or damages to be paid therefor, or when such owner is in any way incapable of making any agreement in reference thereto, and in all cases in which the board shall deem it most expedient, it shall, when authorized

by the Supervisors expressed by ordinance, have the right to cause said property to be condemned, and to institute proceedings for the condemnation of such property, or for the ascertainment of such damages in the manner, so far as the same may be applicable, which is provided in this article for the condemnation of real estate when necessary for the opening of any new street.

Condemnation.—The fact that the municipality has made no attempt to agree with the owner, is not ground for a writ of prohibition to restrain it from condemning the property. *Bishop v. Superior Court*, 87 Cal. 226.

The Legislature has declared that sewerage is a public use; and it is none the less a public use because the city has agreed to allow a hotel outside of the corporate limits to share the use of the proposed sewer. *Pasadena v. Stimson*, 91 Cal. 238.

As to condemnation for opening streets, see sec. 12 of chapter III, of this article.

CHAPTER V.

Harbors and Wharves.

SECTION 1. All the wharves, water front and harbor of San Francisco which now belong or may hereafter belong to the city and county, or over which it may at any time lawfully exercise jurisdiction and control, shall be under the management and control of the Supervisors. All said wharves shall be built and repaired by the Board of Public Works, after proceedings had as provided in this article for the improvement or repair of public buildings.

Wharves.—The charter of the City of San Francisco did not confer upon the city any proprietary interest in the wharves.

People v. Broadway W. Co., 31 Cal. 33. See also San Pedro v. S. P. R. R. Co., 101 Cal. 333.

The owner of land on the water-front has no right, without a license, to wharf out from his land into the bay. *Dana v. Jackson St. W. Co.*, 31 Cal. 118.

The mere establishment of a harbor line does not deprive the state of the right to control and regulate the navigable waters within the line. *Eldridge v. Cowell*, 4 Cal. 80; *Guy v. Hermance*, 5 Cal. 73; *People v. Williams*, 64 Cal. 498.

Nor did the grant of the beach and water lots divest the state of its rights over the navigable highways on which the lots were bounded. *People v. Williams*, 64 Cal. 498.

SEC. 2. The Supervisors shall by ordinance fix and regulate the tolls for wharfage and dockage, and shall provide for the collection of the same, except where the wharves are under the jurisdiction of the Board of State Harbor Commissioners, or may provide that no charges, tolls, dockage or wharfage be imposed or collected. The Supervisors shall not have power to dispose of any wharf, but they may lease any wharf for a term not exceeding two years.

Wharfage.—As to the right to collect wharfage, see: *Sacramento v. New World*, 4 Cal. 41; *People v. Pacific R. M. Co.*, 60 Cal. 323; *People v. San Francisco G. L. Co.*, 54 Cal. 248; *People v. Roberts*, 92 Cal. 659; *People v. San Francisco etc. R. R. Co.*, 35 Cal. 606, 618; *Sacramento v. Confidence*, 4 Cal. 45; *People v. Steamer America*, 34 Cal. 676.

As to the right to use wharves, see *People v. Broadway W. Co.*, 31 Cal. 33.

As to the lease of wharves, see *Pacific Coast S. S. Co. v. Kimball*, 114 Cal. 414.

As to what wharves are under the control of the Board of Harbor Commissioners, see sec. 2524 of the Political Code.

ARTICLE VII.

PUBLIC SCHOOLS AND LIBRARIES.

CHAPTER I.

The Board of Education.

SECTION 1. The School Department shall be under the control and management of a Board of Education composed of four school directors, who shall be appointed by the Mayor, and who shall give their entire time to the duties of their office. They shall each receive an annual salary of three thousand dollars. They shall not be less than thirty years of age and must have been residents of the city and county for at least five years prior to their appointment. The Board shall never be so constituted as to consist of more than two members of the same political party. The term of office of the directors shall be four years. Those first appointed shall so classify themselves by lot that they shall respectively go out of office at the expiration of one, two, three and four years.

Schools — *Laws Governing.*— The matter of public instruction was provided for by the Consolidation Act, (Stats. 1856, 145), art. III. The provisions of this act were superseded by the act of April 27, 1863, (Stats. 1863, 601). This act was amended by the following acts: Act of March 12, 1864, (Stats. 1863-4, 162); act of March 30, 1868, (Stats. 1867-8, 558); act of March 12, 1864, (Stats. 1863-4, 162); act of April 2, 1870, (Stats. 1869-70, 670); act of April 1, 1872, (Stats. 1871-2, 846); act of April 3, 1876, (Stats. 1875-6, 902); act of March 17, 1866, (Stats. 1865-6, 302). The matter of education in gen-

eral is also treated of by sections 1385-1889 of the Political Code, and by the Constitution, art. IX.

The general provisions of the Political Code as to the control of schools by the board of education are applicable to the City and County of San Francisco. *Kennedy v. Board of Education*, 82 Cal. 483; *Kennedy v. Miller*, 97 Cal. 429; *San Diego v. Dauer*, 97 Cal. 442.

The provisions of article IX of the Constitution, making education and the management of the public schools a matter of state supervision, and directing the Legislature to provide a "system of common schools," require the adoption of one system, which shall be applicable to all the common schools. *Kennedy v. Miller*, 97 Cal. 429.

It therefore follows that, unless the matter of education is a "municipal affair," within the meaning of the late amendment to section 6, of article XI, of the Constitution, the provisions of the charter on this subject will be subject to and controlled by the general provisions of the Political Code. (See Intro., p. 19.) It would seem to result from the decision in the case of *Kennedy v. Miller*, 97 Cal. 429, that it is not a municipal, but a state, affair. See also concurring opinion of Myrick, J., in *Earle v. Board of Education*, 55 Cal. 495.

SEC. 2. The board shall organize by electing one of its number president, who shall serve for one year and until his successor is elected. The board may elect a secretary who shall not be a member of the board, and who shall receive an annual salary of eighteen hundred dollars.

SEC. 3. The board shall meet at least once a week and at such other times as it may determine. It shall establish rules for its proceedings; but the concurrent vote of a majority of its members shall be necessary to transact business. In every instance where a power is exercised under this article by the board the vote thereon

shall be taken by ayes and noes and entered in the minutes of the board.

CHAPTER II.

Schools.

SECTION 1. The School Department shall comprise all the public schools of the city and county and shall include primary and grammar schools and may include evening, deportment, technical, cosmopolitan, high and normal schools.

Cal. Con., art. IX, sec. 6.

SEC. 2. Adults shall be entitled to free instruction in the evening schools; but no child under fourteen years of age shall be admitted to such schools.

Admission to schools.—The privilege of attending schools is not a privilege appertaining to a citizen of the United States as such. Ward v. Flood, 48 Cal. 36.

It is a legal right as much as a vested right in property. Ward v. Flood, 48 Cal. 36.

Chinese are entitled to admission. Tape v. Hurley, 66 Cal. 473.

Likewise those of African descent. Ward v. Flood, 48 Cal. 36; Wysinger v. Crookshank, 82 Cal. 588.

As to the power of the Board of Education to establish schools exclusively for persons of African descent, see: Ward v. Flood, 48 Cal. 36; Wysinger v. Crookshank, 82 Cal. 588.

If a child has not sufficient education to enter the lowest grade, he may be refused admission. Ward v. Flood, 48 Cal. 36.

As to defendants in proceedings to compel admission to schools, see Tape v. Hurley, 66 Cal. 473.

CHAPTER III.

Powers of the Board of Education.

SECTION 1. In addition to the powers conferred by the general laws of the state, the Board of Education shall have power:

1. To establish and maintain public schools as provided in this article, and to change, modify, consolidate or discontinue the same as the public welfare may require.

2. To employ such teachers and persons as may be necessary to carry into effect its powers and duties; to fix, alter and approve their salaries and compensation, and to withhold for good and sufficient cause the whole or any part of the wages, salary or compensation of any person or persons employed as aforesaid; and to promote, transfer and dismiss teachers; but no teacher in the department at the time of the adoption of this charter, or who shall be hereafter appointed, shall be dismissed from the department, except for insubordination, immoral or unprofessional conduct, or evident unfitness for teaching. All promotions of teachers shall be based solely on merit and successful teaching. Nothing in this section shall be construed to prevent the board from removing teachers holding only special certificates or serving a probationary term. Charges against teachers must be formally made by the Superintendent after due investigation, and shall be finally passed upon by the board after giving the accused teacher due hearing.

3. To grant, to renew and, for the causes mentioned in section one, subdivision two, of this chapter, to revoke, teachers' certificates.

4. To establish and enforce all necessary rules and regulations for the government and efficiency of the schools and for carrying into effect the school system; to remedy truancy; to compel the attendance at school of children between the ages of six and fourteen years who may be found idle in public places during school hours.

5. To investigate charges against any person connected with or in the employ of the School Department, and to take testimony in such investigations.

6. To receive, to take on lease and to hold in trust for the city and county any real estate belonging to or claimed by the School Department. To hold in trust all personal property that may have been or may hereafter be acquired by the School Department.

7. On or before the first day in April in each year, to appoint school census marshals, and notify the Superintendent of Common Schools of such appointments. Any census marshal found incompetent may be discharged by the Superintendent of Common Schools. Should the board fail or neglect to fill the vacancy so caused within three days thereafter by the appointment of a person competent to perform the duties of census marshal, such vacancy may be filled by the Superintendent of Common Schools.

8. To sue in the name of the city and county for lots, lands and property belonging to or claimed by the School Department. To prosecute and defend all actions at law or special proceedings or suits in equity concerning the enjoyment and possession of such lots, lands and property. To require the services of the City

Attorney in all actions, suits and proceedings by or against the Board of Education.

9. To establish regulations for the disbursement of all moneys belonging to the School Department or to the Common School Fund, and to secure strict accountability in the expenditure thereof; to provide for the prompt payment, on not later than the fifth day of every month, of all salaries due and allowed officers, teachers and other employees of the School Department. For this purpose the Auditor shall annually segregate so much of the Common School Fund as shall not exceed twenty-eight dollars for each pupil in average daily attendance in the public schools of the city and county during the preceding fiscal year. The amount so segregated shall not be applied to the payment of any demand against such Common School Fund during any fiscal year other than for salaries, until all salaries for that fiscal year have been fully paid or provided for. The board shall ascertain and transmit to the Auditor on or before the first Monday in April of each year an estimate of the amount required for such segregation within such limit of twenty-eight dollars.

10. All demands payable out of the Common School Fund shall be filed with the secretary of the Board of Education, and after they have been approved by the board, they shall be signed by the president of the board and the Superintendent and sent to the Auditor. Every demand shall have endorsed upon it a certificate, signed by the secretary, of its approval by the Board of Education, showing the date thereof, and the law authorizing it by title, date and section. Every person in the employ of the School Department entitled to a salary therefrom

shall receive a warrant for the amount due and approved by the board, signed by the president and secretary thereof. The entire monthly salary roll of the department shall be made up by the secretary of the board, and after being duly audited by the Finance Committee thereof and approved by a majority of all the members of the board, shall be endorsed in the same manner as other demands. The salary roll so audited, approved and endorsed, shall be immediately transmitted to the Auditor not later than the third day of every month for comparison with the individual salary warrants issued in the manner above provided; but payment shall be made only on the individual warrants issued in accordance herewith.

11. To lease to the highest responsible bidder, for the benefit of the Common School Fund, for a term not exceeding twenty years, any real property of the School Department not required for school purposes; but no lease shall be made except after advertisement for bids for at least fifteen days in the official newspaper and by an affirmative vote of at least three members of the board approved by an ordinance of the Supervisors.

12. To receive and manage property or money acquired by bequest or donation in trust for the benefit of any school, educational purpose or school library; to carry into effect the terms of any bequest not in conflict with the general laws or this charter; and to sell such personal property as shall no longer be required for use in the schools. All moneys realized by such sales shall be at once paid into the treasury to the credit of the Common School Fund.

Powers of the board of education—*In General.*—The board has only such powers as have been conferred by statute. *Barry v. Goad*, 89 Cal. 215.

The powers and duties of the board of education in cities are the same as those of boards of trustees in other school districts. *Kennedy v. Miller*, 97 Cal. 429.

The power of the board is local as to the territory of its jurisdiction. *People v. Board of Education*, 55 Cal. 331.

See further Political Code, sec. 1617.

Subdivision 1.—The fixing of salaries is part of the management of the schools. *Earle v. Board of Education*, 55 Cal. 489.

The power of the board to appoint “teachers” confers upon them no power to appoint “inspecting teachers.” *Barry v. Goad*, 89 Cal. 215.

Removal of teachers.—The clause of section 1793 of the Political Code, forbidding the removal of teachers except for cause, applies to all teachers elected by the board of education, and protects them in the right to continue in their positions, whether they are elected before or after its enactment. *Kennedy v. Board of Education*, 82 Cal. 483.

Removal from the grade in which the certificate and the statute confer the right to teach is as much a violation of the statute as if the teacher were dismissed without cause and not given another position. *Kennedy v. Board of Education*, 82 Cal. 483; *Fairechild v. Board of Education*, 107 Cal. 92.

A teacher elected by the city board of education, without limitation of time, is entitled to hold the position while competent and faithful, and can only be dismissed for violation of the rules of the board of education, incompetency, or unprofessional or immoral conduct; nor can such teacher be transferred against his will to a school of lower grade. *Kennedy v. Board of Education*, 82 Cal. 483.

A teacher elected for a year or other limited time may be removed at any time after the expiration of such time. *Marion v. Board of Education*, 97 Cal. 606.

The fact that the teacher believed that she was elected to a life

position, cannot change this rule. *Marion v. Board of Education*, 97 Cal. 606.

Salaries.—How paid: *Knox v. Woods*, 8 Cal. 545; subdiv. 9, of this section.

Subdivision 3.—The board may be compelled to issue the certificate in a proper case. *Keller v. Hewitt*, 109 Cal. 146.

Subdivision 4.—The rules adopted by the board of education cannot control the provisions of the statute, and are immaterial in determining the statutory right of a teacher. *Kennedy v. Board of Education*, 82 Cal. 483.

Subdivision 6.—A school district is a corporation for educational purposes and can take by will. *Estate of Bulmer*, 59 Cal. 131. See also *Kennedy v. Miller*, 97 Cal. 429.

As to school lands, see note to chapter VI of this article.

Subdivision 7.—Duty of school census marshals: Political Code, secs. 1634-1640.

Subdivision 8.—The board of education is a legal body, capable of suing for lots conveyed to it by the fund commissioners. *Board of Education v. Fowler*, 19 Cal. 11.

It may maintain ejectment for a school lot. *Board of Education v. Donahue*, 53 Cal. 190.

The right to sue and defend being in the board of education, the city, or county, or its attorney, in its behalf, has no authority to submit to any court the determination of the rights of the board of education to a schoolhouse site, and any judgment rendered against the city and county in favor of a third person for the possession of such site is no bar to an action by the board of education to recover possession thereof. *Board of Education v. Martin*, 92 Cal. 209.

Subdivision 9.—As to the payment of salaries, see *Knox v. Woods*, 8 Cal. 545.

The act of April 2, 1880, (Stats. 1880, *Ban. ed.*, 105), relating to salaries of school-teachers in cities having one hundred thousand inhabitants or more, was declared unconstitutional in *Earle v. Board of Education*, 55 Cal. 489.

Subdivision 10.—*Fresno N. Bank v. Hawkins*, 93 Cal. 551. Mandamus will lie to compel the board to draw its draft to

pay for supplies furnished to the school under its control. *Raisch v. Board of Education*, 81 Cal. 542.

Subdivision 12.—A school district is a corporation for educational purposes and may take by will. *Estate of Bulmer*, 59 Cal. 131; *Kennedy v. Miller*, 97 Cal. 429.

SEC. 2. The board shall annually, before the first day of May, make a list of supplies estimated to be required by the School Department for the ensuing fiscal year, stating in clear and explicit terms the quantity and kind of articles needed and how and when they shall be delivered, and shall invite proposals for furnishing the same by advertising therefor for at least ten days in the official newspaper.

The provisions of article II, chapter III, of this charter, in regard to the advertising for proposals, the affidavit and security accompanying the same, the presentation and opening of proposals, the awarding of contracts and the security for the performance thereof, shall, so far as the same can be made applicable, apply to all proposals and contracts made, awarded or entered into for furnishing supplies to the School Department. Any contract made in violation of any provision of this article shall be void.

SEC. 3. The board shall, during each year, transmit to the Supervisors a report in writing for the preceding fiscal year, stating the number of schools within its jurisdiction, the length of time they have been kept open, the number of pupils taught in each school, the average daily attendance of pupils in all the public schools, the number, names and salaries of teachers, the dates of their appointments and the character of the certificates

held by them, the amount of money drawn from the treasury by the department during the year, distinguishing the state fund from all others, the purpose for which such money has been expended, with particulars, and such other information as may be required by the State Superintendent, the Supervisors or the Mayor.

SEC. 4. The board shall, between the first and twenty-first days of May of each year, adopt a schedule of salaries for the next ensuing fiscal year for teachers and all employees of the School Department.

CHAPTER IV.

Superintendent of Schools.

SECTION 1. The Superintendent of Common Schools of the city and county shall be by virtue of his office a member of the Board of Education, without the right to vote. He shall receive an annual salary of four thousand dollars.

Superintendent of schools.—Section 1552 of the Political Code clearly contemplates the allowance of a salary to the county superintendent of education by the board of supervisors before it shall be paid. *Peachy v. Redmond*, 59 Cal. 326.

The provision of section 1793 of the Political Code, vesting the power to fix the salary of the superintendent of schools in the board of education, prevails over a provision of the city charter directing the common council to fix such salary. *San Diego v. Dauer*, 97 Cal. 442.

As to the election of the superintendent, see Cal. Con., art. IX, sec. 3.

The provision of the County Government Act giving the power to appoint the superintendent of schools to the board of super-

visors, was held not to apply to the City and County of San Francisco. *People v. Babcock*, 114 Cal. 559.

SEC. 2. The Superintendent shall appoint four deputy superintendents. The number of such deputies shall not be increased until the average daily attendance shall have reached forty-five thousand, when the Superintendent shall appoint one additional deputy, and thereafter he shall appoint one deputy for each additional eight thousand children in average daily attendance. If from any cause a vacancy occurs in the office of deputy superintendent, such vacancy shall be filled by the Superintendent.

See Political Code, secs. 1549-1550.

SEC. 3. Of the deputy superintendents first appointed, the Superintendent shall appoint two for two years and two for four years. All deputy superintendents subsequently appointed shall hold office for four years.

SEC. 4. Such deputies must have at least ten years' successful experience as teachers, and shall have been residents of the city and county at least five years preceding their appointment.

SEC. 5. In addition to the duties imposed by the general laws of the state, it shall be the duty of the Superintendent:

1. To observe and enforce all rules and regulations of the Board of Education and to see that no religious or sectarian books or teachings are allowed in the schools.

2. To report to the Board of Education annually, on or before the twentieth day of August, and at such other times as the board may require, all matters pertaining to the condition and progress of the public schools of the city and county during the fiscal year, with such recommendations as he may deem proper.

3. To inform the board of the condition of the schools, schoolhouses and of other matters connected therewith, and to recommend such measures as he may deem necessary for the advancement of education in the city and county, and for the care and improvement of the property of the School Department.

4. To visit and examine with the assistance of his deputies all the schools at least twice a year and determine their standing and classification. To recommend rules for the promotion of pupils from grade to grade, from school to school, and for the transfer and the graduation of pupils.

5. To recommend to the board the courses of studies; the text-books and books for supplementary use in the public schools and the purchase of such apparatus, books, stationery and other class-room supplies as may be required in the schools.

6. To report to the board once a month upon the standing of schools examined by him and his deputies.

See Political Code, sec. 1543.

As to religious or sectarian books or teachings, see Cal. Con., art. IX, sec. 8.

SEC. 6. The Superintendent and his deputies shall constitute the City Board of Examination, and shall have power:

1. To examine applicants, and to prescribe a standard of proficiency, which will entitle the person examined to receive:

a. A high school certificate, valid for six years, which shall authorize the holder to teach any primary, grammar, or high school in the city and county.

b. A city certificate, grammar grade, valid for six years, which shall authorize the holder to teach any primary or grammar school in the city and county.

c. A city certificate, primary grade, valid for two years, which shall authorize the holder to teach any primary school in the city and county. They shall report the result of the examination to the Board of Education, and the board shall thereupon issue to the successful candidates the certificates to which they shall be entitled.

2. To recommend applicants for special certificates valid for a period not to exceed six years, upon such special studies as may be authorized by the Board of Education.

3. For immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, to recommend to the Board of Education the revocation of any certificates previously granted by the board.

4. To recommend the granting of city certificates, and the renewal thereof, in the manner provided for the granting and renewal of county certificates by county boards of education in section seventeen hundred and seventy-five of the Political Code.

See Political Code, secs. 1787-1794.

The board may be compelled by mandamus to issue a teacher's certificate in a proper case. *Keller v. Hewitt*, 109 Cal. 146.

CHAPTER V.

School Tax Levy.

SECTION 1. The Board of Education shall, on or before the first Monday of April in each year, report to the Supervisors an estimate of the amount which shall be required during the ensuing fiscal year for the purpose of meeting the current annual expenses of public instruction in the city and county, specifying the amount required for supplies to be furnished pupils, including text-books for indigent children; for purchasing and procuring sites; for leasing rooms or erecting buildings; for furnishing, fitting up, altering, enlarging and repairing buildings; for the support of schools organized since the last annual apportionment; for the salary of the school directors, Superintendent, deputy superintendents, and all other persons employed in the School Department, and for other expenditures necessary for the administration of the public school system; but the aggregate amount so reported for any one year shall not exceed the sum of thirty-two dollars and fifty cents for each pupil, who in the fiscal year immediately prior thereto actually attended the schools entitled to participate in the apportionment thereof.

SEC. 2. The Supervisors at the time and in the manner of levying and collecting other city and county taxes shall levy and cause to be collected for the Common

School Fund a tax which, added to the revenue derived from other sources, shall produce an amount of money which shall not exceed thirty-two dollars and fifty cents for each pupil in attendance during the preceding fiscal year, as ascertained and reported by the Board of Education.

School tax.—See Political Code, secs. 1817-1820.

Whenever the Legislature raises a fund by taxation or otherwise, for the support of common schools, any contemporaneous or subsequent legislation having for its object the diversion of such fund to any other purpose is in contravention of the second section of article IX of the Constitution, and is void. *Crosby v. Lyon*, 37 Cal. 242.

School-district taxes can not be imposed unless the provisions of the Political Code are substantially complied with. *People v. Seale*, 52 Cal. 71; *People v. Pratt*, 59 Cal. 77.

An act authorizing a county to levy and collect, for school purposes, a rate of taxation which will produce an amount not exceeding a given sum, and which rate may be as high as fifty cents on the one hundred dollars, is in conflict with, and repealed by, a subsequent act passed for the whole state, fixing a different rate. *People v. Sargent*, 44 Cal. 430.

The Legislature cannot impose a tax upon the property of a school district without leaving any discretion to the local authorities. *McCabe v. Carpenter*, 102 Cal. 469.

A county, as such, has no interest in the funds of a high-school district. *Elberg v. San Luis Obispo*, 112 Cal. 316.

In municipal corporations to and including those of the fifth class, the tax levy is to be made by the legislative authority of the city. *Chico H. S. Board v. Butte Co.*, 118 Cal. 115.

SEC. 3. In case of extreme emergency or great calamity, such as disaster from fire, riot, earthquake or public enemy, the Board of Education may, with the approval of the Mayor and Supervisors, incur extraordinary expenditures in excess of the annual limit pro-

vided for in this charter, for the repair and construction and furnishing of school houses in place of those so injured or destroyed. The Supervisors may, by ordinance, cause to be transferred to the Common School Fund, from moneys in any fund not otherwise appropriated, sufficient money to liquidate such expenditures, and provide for the same in the next tax levy of the city and county.

CHAPTER VI.

School Houses and Lots.

SECTION 1. When any locality in the city and county is unprovided with sufficient school accommodations, the Board of Education may, by resolution, make a requisition upon the Board of Public Works for plans and specifications and estimates for a new school house, specifying the number of class rooms needed, the location of the proposed school house, the date on which it should be completed, the amount of money in the school fund available for the purpose, and such other information as will enable the Board of Public Works to prepare the necessary plans, specifications and estimates of cost for such school house.

If such plans, specifications and estimates are approved by the Board of Education, they shall be endorsed "Approved," with the date of such approval, by the president and secretary thereof, and returned to the Board of Public Works, which shall proceed without delay to have such school house constructed and completed in accordance therewith.

When such school house is completed, the Board of

Public Works shall notify the Board of Education to examine the same, and if it has been built in accordance with the plans and specifications and within the estimated cost thereof, the Board of Education shall accept and take possession of it.

School houses and lots.—A schoolhouse site reserved by the city for its use, under the Van Ness Ordinance, is public property, to which no title can be acquired by adverse possession. Board of Education v. Martin, 92 Cal. 209; Board of Education v. Fowler, 19 Cal. 11.

The board of education may maintain ejectment for a school lot. Board of Education v. Donahue, 53 Cal. 190.

The board of education has no authority to appropriate a public square as a site for the erection of a schoolhouse; nor has the board of supervisors any authority to authorize such appropriation. McCullough v. Board of Education, 51 Cal. 418.

A taxpayer of a school district, whose children attend the school of the district, may maintain a proceeding for a writ of mandate to compel the board to comply with the instructions of the electors as to the location of a schoolhouse site. Eby v. Red Bank School Dist., 87 Cal. 166.

As to the election, see People v. Caruthers School Dist., 102 Cal. 184.

A mechanic's lien cannot be enforced against a schoolhouse erected by a public school district. Mayrhofer v. Board of Education, 89 Cal. 110.

SEC. 2. When any school house, building, fence or other property belonging to, or connected with, or under the control of, the Board of Education, needs repairing, altering or improving, the board shall notify the Board of Public Works, specifying in general terms the work to be done. The Board of Public Works shall cause the same to be done forthwith, if the cost thereof shall not exceed two hundred and fifty dollars; otherwise the

Board of Public Works shall submit plans, specifications and estimates of cost to the Board of Education for its approval, and if approved as provided in section one of this chapter, the Board of Public Works shall cause the same to be done, and if done in accordance with the plans and specifications, and within such estimate, the same shall be accepted and shall be paid for out of the Common School Fund.

SEC. 3. When it is necessary to purchase a lot for the use of the School Department, the price paid for such lot shall not exceed the market value of adjacent property of equal size and similarly situated. Any school building hereafter constructed shall have a clear space of at least ten feet around the same.

CHAPTER VII.

Public Library and Reading Rooms.

SECTION 1. The Public Library and Reading Rooms of the city and county shall be under the management of a board of twelve trustees, one of whom shall be the Mayor of the city and county, who shall be a member of the board by virtue of his office. The board of trustees of said library and reading rooms in office at the time this charter shall take effect shall continue to constitute the board of trustees of said Public Library and Reading Rooms; and all vacancies therein shall be filled by said board. None of said trustees shall receive any compensation for his services.

Public libraries and reading-rooms.—For laws governing public libraries and reading-rooms consult the following

acts: Act of April 26, 1880, (Stats. 1880, 231; *Ban. ed.*, 524); Act of March 18, 1878, (Stats. 1877-8, 329).

The act of 1880 by its terms applies only to such libraries as are established under its provisions, and not to those existing prior to its date, which were established under special laws or municipal charters. *People v. Howard*, 94 Cal. 73.

The public library of the City and County of San Francisco was established under the act of 1878, which was succeeded by the act of 1880, and it will still be governed by that act and not by the charter, unless the matter is a "municipal affair." See *People v. Howard*, 94 Cal. 73. and *Intro.*, p. 19.

SEC. 2. The Supervisors shall, for the purpose of maintaining such library and reading rooms and such branches thereof as the board of library trustees may from time to time establish, and for purchasing books, journals and periodicals, and for purchasing or leasing real and personal property, and for constructing such buildings as may be necessary, annually levy a tax on all property in the city and county not exempt from taxation which shall not be less than one and one-half cents nor more than two and one-half cents upon each one hundred dollars assessed valuation of said property. The proceeds of said tax shall be credited to the Library Fund.

SEC. 3. All revenue from such tax, together with all money or property derived by gift, devise, bequest or otherwise, for the purposes of the library, shall be paid into the treasury and be designated as the Library Fund and be applied to the purposes herein authorized. If such payment into the treasury should be inconsistent with the conditions or terms of any such gift, devise or bequest, the board shall provide for the safety and pre-

servation of the same and the application thereof to the use of the library and reading rooms, in accordance with the terms and conditions of such gift, devise or bequest.

SEC. 4. The title to all property, real and personal, now owned or hereafter acquired by purchase, gift, devise, bequest or otherwise, for the purpose of the library and reading rooms, when not inconsistent with the terms of its acquisition, shall vest in the city and county, and in the name of the city and county may be sued for and defended by action at law or otherwise.

SEC. 5. The board shall take charge of the Public Library and Reading Rooms, and the branches thereof, and of all real and personal property thereunto belonging, or that may be acquired by loan, purchase, gift, devise or otherwise, when not inconsistent with the terms and conditions of the gift, devise or bequest. It shall meet for business purposes at least once a month, and at such other times as it may appoint in a place to be provided for the purpose. A majority of the board shall constitute a quorum for the transaction of business. It shall elect one of its number president, who shall serve for one year and until his successor is elected, and shall elect a librarian and secretary and such assistants as may be necessary. The secretary shall keep a full account of all property, money, receipts and expenditures and a record of all its proceedings.

SEC. 6. The board, by a majority vote of all its members to be recorded in its minutes with the ayes and noes, shall have power:

1. To make and enforce all rules, regulations and by-

laws necessary for the administration, government and protection of the library and reading rooms and branches thereof, and all property belonging thereto, or that may be loaned thereto.

2. To administer any trust declared or created for such library and reading rooms and branches thereof, and provide memorial tablets and niches to perpetuate the memory of those persons who may make valuable donations thereto.

3. To define the powers and prescribe the duties of all officers; determine the number of and elect all necessary subordinate officers and assistants, and for good and sufficient cause to remove any officer or assistant.

4. To purchase books, journals, publications and other personal property.

5. To order the drawing and payment upon vouchers, certified by the president and secretary, of money from the Library Fund for any liability or authorized expenditure.

6. To fix the salaries of the librarian and secretary and their assistants; and, with the approval of the Supervisors, expressed by ordinance, to erect and equip such building or buildings, room or rooms, as may be necessary for the library and reading rooms and branches thereof.

7. To establish such branches of the library and reading rooms as the growth of the city and county may from time to time demand.

SEC. 7. The Supervisors shall have power to appropriate and authorize the use, either in whole or in part, of any real estate belonging to the city and county, for

the purpose of erecting and maintaining a building or buildings thereon to be used for the library and reading rooms, or branches thereof, and may appropriate the whole or any portion of any public building belonging to the city and county for such use.

ARTICLE VIII.

POLICE DEPARTMENT.

CHAPTER I.

Organization.

SECTION 1. The Police Department shall consist of a Board of Police Commissioners, a Chief of Police, a police force, and of such clerks and employees as shall be necessary to carry into effect the provisions of this article.

Police department.—Cons. Act, (Stats. 1856, 145), art. II; Act of April 25, 1863, (Stats. 1863, 540); Act of April 4, 1864, (Stats. 1863-4, 502); Act of March 23, 1872, (Stats. 1871-2, 512); Act of May 17, 1861, (Stats. 1861, 554); Act of April 1, 1878, (Stats. 1877-8, 879); Act of February 24, 1891, (Stats. 1891, 10).

As to vacations, see: Act of March 10, 1891, (Stats. 1891, 47).

SEC. 2. All members of the Police Department shall hold office during good behavior, subject to the provisions hereinafter set forth relating to promotions, suspensions, dismissals and disratements.

See article XIII of this charter.

SEC. 3. No person shall become a member of the department unless he shall be a citizen of the United States, of good character for honesty and sobriety, able to read and write the English language, and a resident of the city and county for at least five years next preceding his appointment. Every appointee to the department

shall not be less than twenty-one nor more than thirty-five years of age, must possess the physical qualifications required for recruits of the United States army, and before his appointment must pass a satisfactory medical examination under such rules and regulations as may be prescribed by the Board of Police Commissioners. In making appointments of members of the department, the board shall never regard the political or religious preferences or affiliations of any candidate.

CHAPTER II.

Police Commissioners.

SECTION 1. The Police Department shall be under the management of a Board of Police Commissioners consisting of four members who shall be appointed by the Mayor, and each of whom shall receive an annual salary of twelve hundred dollars. No person shall be appointed such Commissioner who shall not have been an elector of the city and county for at least five years next preceding his appointment.

Police commissioners.—Act of April 4, 1864, (Stats. 1863-4, 502), sec. 1, subdiv. 12; Act of April 3, 1876, (Stats. 1875-6, 829), sec. 7; Act of April 1, 1878, (Stats. 1877-8, 879).

The office of police commissioner of the City and County of San Francisco is not an elective office. *People v. Pond*, 89 Cal. 141; *Staudé v. Election Com'rs*, 61 Cal. 313.

Under the act of April 1, 1878, (Stats. 1877-8, 879), the appointment of police commissioners was vested in the judges of the district court. This power was not judicial and did not devolve upon the judges of the superior court. *Heinlen v. Sullivan*, 64 Cal. 378.

No term was fixed by this act, and it was held that, since the

Constitution made none, they would continue to act until the City and County became organized under the general laws or adopted a freeholders' charter, and that, upon the expiration of four years from the time of an appointment under the act no vacancy occurred which the governor was authorized to fill. *People v. Hammond*, 66 Cal. 654; *People v. Gunst*, (called *People v. Menzies* in the reports), 110 Cal. 447.

SEC. 2. The board shall never be so constituted as to consist of more than two members of the same political party. The term of office of the Commissioners shall be four years. Those first appointed shall so classify themselves by lot that they shall respectively go out of office at the expiration of one, two, three and four years.

SEC. 3. The Commissioners shall be successors in office of the Police Commissioners holding office in the city and county at the time this charter shall go into effect by virtue of appointment under any statute or law of this state.

SEC. 4. The Police Commissioners shall organize by electing one of their number president, who shall hold such office for one year. The board shall appoint a secretary, who shall receive an annual salary of fifteen hundred dollars. The sessions of the board shall be public, except that executive sessions may be held whenever deemed proper by the board. The board shall meet at least once a week in the rooms of the Police Department, or in case of public emergency at such place as the board may select. The secretary must keep minutes of its proceedings; and in every case where a power is exercised by the board under this article the ayes and noes thereon shall be entered therein.

CHAPTER III.

Powers of the Board.

SECTION 1. The Board of Police Commissioners shall have power :

1. To appoint, promote, suspend, disrate or dismiss any member of the department in the manner hereinafter provided.

2. To prescribe rules and regulations for the government, discipline, equipment and uniform of the department, and from time to time to alter or repeal the same, and to prescribe penalties for the violations of any of such rules and regulations. All such rules and regulations must be reasonable.

3. To grant permits to any person desiring to engage in the sale of liquor in less quantity than one quart, and to grant permits to any person engaged in the business of selling liquor to be drunk on the premises, and to revoke any such permit when it shall appear to the board that the business of the person to whom such permit was given is conducted in a disorderly or improper manner. Without such permit none of such persons shall engage in the business of selling liquor. If the board refuse to grant such permit, or propose to revoke any permit that has been granted, the person who is refused such permit or whose permit it is proposed to revoke, shall be entitled to be heard before the board in person, or through counsel, and to have, free of charge, all reasonable facilities at the hearing. Such permits shall not be granted for more than three months at one time, and they shall distinctly state the name of the person to whom the same is given, and the description of

the premises where such business is to be carried on. Such permits shall at all times be subject to inspection by any member of the department. Complaints to revoke permits granted by the board must be in writing, signed by the person making the same and filed with the secretary of the board; and a copy thereof certified by the secretary must be served upon the party complained against at least five days before the time set for the hearing of the complaint.

4. At its discretion, upon the petition of any person, firm or corporation, to appoint, and at pleasure to remove, special police officers. Such officers shall be subject to all the rules and regulations of the board.

5. To provide for the care, restitution or sale at annual public auction of all unclaimed property that may come into the possession of the Property Clerk, and to direct the destruction of such property as shall consist of implements, weapons, property or any other article, matter or thing used in the commission of crime.

6. To appoint Police Matrons for the care of female prisoners and to provide rules and regulations for the government of the same.

7. To appoint a Police Surgeon who shall receive an annual salary of fifteen hundred dollars.

Subdivision 1.—As to removals, see Chapter VII of this article.

Subdivision 3.—As to the validity of a law requiring a license to sell liquor, see: Ex parte Wolters, 65 Cal. 269; Matter of Lawrence, 69 Cal. 608; Ex parte McNally, 73 Cal. 632; Ex parte Hurl, 49 Cal. 557; Matter of Guerrero, 69 Cal. 88; Ex parte Benninger, 64 Cal. 291.

SEC. 2. The president may convene the board for special meetings. The secretary of the board shall be the official custodian of all records and official documents of the board.

CHAPTER IV.

The Chief of Police.

SECTION 1. The Chief of Police shall be appointed by the Board of Police Commissioners and hold office for the term of four years. He shall receive an annual salary of four thousand dollars. He shall have control, management and direction of all members of the department in the lawful exercise of his functions, with full power to detail any of them to such public service as he may direct, and with like power to suspend temporarily any member of the department. In all cases of such suspension, he shall immediately report the same to the board with the reasons therefor in writing. He shall maintain and enforce law and rigid discipline so as to secure complete efficiency of the department. He shall, subject to the directions and orders of the Commissioners, have control of such of the prisons of the city and county as are not by the general law under the control of the Sheriff.

Chief of police.—The chief of police is not entitled to a reward offered by the governor for the arrest and conviction of a criminal. *Lees v. Colgan*, 120 Cal. 262.

SEC. 2. In the suppression of any riot, public tumult, disturbance of the public peace, or organized resistance against the laws of public authority, the Chief of Police

shall, in the lawful exercise of his functions, have all the powers that are now or may be conferred on sheriffs by the laws of the state.

As to the duty of sheriffs, see: Political Code, secs. 4175-4190; Penal Code, secs. 723-734.

SEC. 3. The Chief of Police shall be the chief executive officer of the department. He shall be chargeable with and responsible for the execution of all laws and ordinances and the rules and regulations of the department. He shall see that the orders and process issued by the Police Court and such other orders and process as may be placed in his hands are promptly executed, and shall exercise such other powers connected with his office as may be provided for in the general rules and regulations of the Commissioners.

SEC. 4. The Chief of Police shall keep a public office in which he shall have the statutes of this state and of the United States, and all necessary works on criminal law. In case of his temporary absence some competent member of the department, by him designated for that purpose, shall be in attendance at all hours of the day and night; and in such case he shall make known to such member of the department where he can be found.

SEC. 5. The Chief of Police shall detail one or more of the members of the department to attend constantly on the Police Court and to execute its orders and process. He shall detail at his pleasure members of the department to act as his chief clerk, assistant clerks, prison keepers and property clerk. Said chief clerk and said property clerk shall each receive an annual salary of twenty-four hundred dollars.

SEC. 6. The Chief of Police may from time to time disburse such sums for contingent expenses of the department, as in his judgment shall be for the best interest of the city and county, to be paid out of the contingent fund allowed the department. The aggregate of all such sums shall not in any one fiscal year exceed the sum of ten thousand dollars. Provision shall be made by the Supervisors for such contingent fund in the annual tax levy. The Commissioners shall allow and order paid out of such contingent fund as contingent expenses of the Police Department, upon orders signed by the Chief of Police, such amounts as may be required.

SEC. 7. The Chief of Police shall possess powers of general police inspection, supervision and control, over all pawnbrokers, peddlers, junk-shop keepers, dealers in second-hand merchandise, auctioneers and intelligence office keepers. All persons engaged in said callings must first procure permits from the Commissioners. In the exercise of such power the Chief may by authority in writing from time to time empower members of the Police Department, when in search of property feloniously obtained or in search of suspected offenders, or in search of evidence to convict any person charged with crime, to examine the books and the premises of any such person. Any such member of the Police Department, when thereunto empowered in writing by the Chief of Police, may examine property alleged to have been pawned, pledged, deposited, lost, strayed or stolen.

CHAPTER V.

Subordinate Officers.

SECTION 1. Subordinate officers of the Police Department shall consist of captains, who shall each receive an annual salary of twenty-four hundred dollars; lieutenants, who shall each receive an annual salary of sixteen hundred and eighty dollars; sergeants, who shall each receive an annual salary of fifteen hundred dollars; and corporals, who shall each receive an annual salary of fourteen hundred and four dollars.

SEC. 2. There shall be one captain for each one hundred police officers. The duties of captains shall be defined by the rules and regulations of the Commissioners and by the orders of the Chief of Police.

SEC. 3. There shall be one lieutenant for every fifty police officers. The duties of lieutenants shall be defined by the rules and regulations of the Commissioners, by the orders of the Chief of Police, and by the orders of their respective captains.

SEC. 4. There shall be as many sergeants as in the judgment of the Commissioners may be advisable, not to exceed one sergeant for every ten police officers. The duties of sergeants shall be defined by the rules and regulations of the Commissioners, the orders of the Chief of Police, and the orders of their respective captains and lieutenants.

SEC. 5. There shall be as many corporals' as in the judgment of the Commissioners may be advisable. The duties of corporals shall be defined by the rules and regu-

lations of the Commissioners, the orders of the Chief of Police, and the orders of their respective captains, lieutenants and sergeants.

SEC. 6. The Chief of Police may detail for detective duties such members of the department as he may select, not to exceed twenty-five. He shall designate a captain of police to act as captain over the officers so detailed who shall receive an annual salary of three thousand dollars. Such captain shall rank as Captain of Detectives, and his duties shall be defined by the Commissioners and by the Chief of Police. The members so detailed shall be known and ranked as Detective Sergeants. Each of said Detective Sergeants shall receive an annual salary of eighteen hundred dollars. They may be removed at any time from such detail by the Chief of Police. Their duties shall be defined by the rules and regulations of the Commissioners, by the orders of the Chief of Police, and by the orders of the Captain of Detective .

CHAPTER VI.

Police Officers.

SECTION 1. The police force of the city and county shall not exceed one police officer for each five hundred inhabitants thereof. Police officers shall each receive an annual salary of twelve hundred and twenty-four dollars.

The provision of the Constitution, subdiv. 28 of sec. 25 of article IV, forbidding the Legislature to pass special laws "creating offices or prescribing the powers and duties of officers, in

counties, cities and counties, townships, election or school districts," includes policemen. *Farrell v. Sacramento*, 85 Cal. 408.

SEC. 2. Every police officer shall, upon the arrest of any person charged with the commission of crime, search the person of such offender, and take from him all property and weapons, and forthwith deliver the same to the prison-keeper, who must deliver the same to the Property Clerk, to be by him kept until other disposition be made thereof according to law.

SEC. 3. Police officers shall be health officers by virtue of their office.

CHAPTER VII.

Promotions, Suspensions, Dismissals and Disratements.

SECTION 1. All promotions in the department shall be from the next lower rank, seniority of service and meritorious public service being considered.

SEC. 2. Any member of the department guilty of any offense, or violation of rules and regulations, shall be liable to be punished by reprimand, or by fine to be fixed by the commissioners, or by dismissal from the department; but no fine shall ever be imposed at any one time for any offense exceeding one month's salary.

SEC. 3. No member of the department shall be subject to dismissal for any cause, or to punishment for any breach of duty or misconduct therein, except after a fair and impartial trial before the Commissioners upon a verified complaint filed with the board setting forth spe-

cifically the acts complained of, and after such reasonable notice to him of the time and place of hearing as the board may by rule prescribe. The accused shall be entitled upon such hearing to appear personally and by counsel; to have a public trial; and to secure and enforce free of expense to him the attendance of all witnesses necessary for his defense.

The commissioners have no power to remove a police officer without written charges or trial and conviction. *Smith v. Brown*, 59 Cal. 672.

CHAPTER VIII.

Unclaimed and Stolen Property.

SECTION 1. All property or money taken under suspicion of having been stolen or feloniously obtained, the result of crime or constituting the proceeds of crime, and all property or money taken from intoxicated or insane persons, or other persons incapable of taking care of themselves, or property or money lost or abandoned that may in any way come into the possession or custody of any member of the department, or of any criminal court or judge of the city and county, shall be delivered to the Property Clerk, who shall enter in a record book, to be kept by him for that purpose, a full and explicit description of the same, together with the name of the person or persons from whom received, the names of any claimants thereto, the time of the seizure, and the final disposition thereof.

SEC. 2. When property or money taken from any person arrested, or otherwise under suspicion of having been feloniously obtained, or of being the proceeds of

crime, is brought with the claimant thereof and the person arrested, before a court for examination and adjudication, and the court shall adjudge that the person arrested is innocent of the offense alleged, and that the property or money belongs to him, it shall order such property or money returned to the accused, and the Property Clerk shall thereupon deliver such property or money to him personally, but not to his attorney or agent. If upon such hearing the accused shall be held for trial or examination, such property or money shall remain in the custody of the Property Clerk until the discharge or conviction of the person accused.

SEC. 3. All unclaimed property and money that has been in the custody of the Property Clerk for one year shall be sold at public auction, after having been five times advertised in the official newspaper; and the proceeds of such sale shall be paid into the treasury to the credit of the Police Relief and Pension Fund. In no case shall such property be sold or disposed of until the necessity for the use thereof as evidence has ceased. The proceeds of property taken from insane persons shall not become part of such fund until after the expiration of three years from the time the same is paid into the treasury; but the Commissioners and the Chief of Police shall, during such period, make diligent inquiry to ascertain the person or persons to whom the same should by right be payable.

SEC. 4. If any property or money in the custody of the Property Clerk be required as evidence in any court, it shall be delivered to any officer who shall present an order in writing to that effect from such court, and the

clerks of such court shall be responsible for the safe delivery of such property or money to the Property Clerk.

SEC. 5. All valuables and money in the custody of the Property Clerk shall be deposited by him for safe keeping with the Treasurer in such manner and subject to such rules and regulations as may be prescribed by the board.

CHAPTER IX.

Present Police Force.

SECTION 1. All members of the present police force in good standing in the department at the time this charter goes into effect, and the Park Police, shall continue therein without civil service examination; but all new appointments and all promotions made after this charter shall go into effect shall be subject to and governed by article XIII of this charter.

CHAPTER X.

Police Relief and Pension Fund.

SECTION 1. In order to continue in force and make effectual pensions already existing in favor of the police force, a fund is hereby created to be known and designated as the Police Relief and Pension Fund. The Board of Police Commissioners and its successors in office shall constitute a board of trustees of said fund.

Police relief and pension fund.—An insurance fund similar to that provided by this charter was created by the act of April 1, 1878, (Stats. 1877-8, 879). This act was repealed by

the act of March 4, 1889, (Stats. 1889, 56), which was amended by the act of March 31, 1891, (Stats. 1891, 287), and the act of March 2, 1897, (Stats. 1897, 52).

Such repeal and merger was held constitutional and valid as against the legal representatives of a member of the police force whose salary was in part detained under the former act, but who did not die until after the passage of the later act. *Pennie v. Reis*, 80 Cal. 266.

Such act did not create a "special commission" within the prohibition of section 13 of article XI of the Constitution, nor grant an extra compensation to a public officer, or make to him any gift of public money, but is in all respects valid. *Pennie v. Reis*, 80 Cal. 266.

A police officer has no vested right to the sum paid by him into the insurance fund, except upon the happening of the contingencies mentioned in the act. *Clarke v. Reis*, 87 Cal. 543.

He therefore is not entitled to a writ of mandamus to compel repayment of the sum paid by him into the fund, if the petition is insufficient to bring him within any of the contingencies of the statute. *Clarke v. Reis*, 87 Cal. 543.

SEC. 2. The Board of Police Commissioners may, by a unanimous vote, retire and relieve from service any aged, infirm or disabled member of the department who has arrived at the age of sixty-five years, and who, upon an examination by two regularly certificated practicing physicians appointed by the Commissioners for that purpose, may be ascertained to be by reason of such age, infirmity or other disability, unfit for the performance of his duties. Such retired member shall receive from the Police Relief and Pension Fund a monthly pension equal to one-half of the amount of the salary attached to the rank held by him three years prior to the date of his retirement. No such pension shall be paid unless such person has been an active member of the department for

twenty years continuously next preceding his retirement, and the same shall cease at his death.

SEC. 3. Any member of the department who shall become physically disabled by reason of any bodily injury received in the performance of his duty, upon his filing with the Commissioners a verified petition setting forth the facts constituting such disability and the cause thereof, accompanied by a certificate signed by the Chief of Police, the captain of the company to which he belongs, and by two regularly certificated physicians of the city and county recommending his retirement upon a pension on account of such disability, may be retired from the department upon an annual pension equal to one-half the amount of salary attached to the rank which he may have held three years prior to the date of such retirement, to be paid to him during his life and to cease at his death. In case his disability shall cease his pension shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement.

SEC. 4. The Commissioners shall, out of the Police Relief and Pension Fund, provide for the family of any officer, member or employee of the department who may be killed while in the performance of his duty, as follows:

First—Should the decedent be married, his widow shall as long as she may remain unmarried be paid a monthly pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death.

Second—Should the decedent leave no widow, but leave an orphan child or children under the age of six-

teen years, such children shall collectively receive a pension equal to one-half the salary attached to the position held by their father at the time of his death, until the youngest attains the age of sixteen years.

Third—Should the decedent leave no widow and no orphan child or children, but leave a parent or parents depending solely upon him for support, such parents, so depending, shall collectively receive a pension equal to one-half the salary attached to the position held by the decedent at the time of his death, during such time as the Commissioners may unanimously determine its necessity.

SEC. 5. Any person receiving a pension as aforesaid from the Police Relief and Pension Fund, who shall be convicted of felony, shall become dissipated, an habitual drunkard, or shall become a non-resident of this State, shall forfeit all right to said pension.

SEC. 6. When any member of the department shall, after ten years' service, die from natural causes, then his widow, and if there be no widow, then his children, or if there be no widow or children, then his mother if depending upon him for support, shall be entitled to a sum equal to the amount retained by the Treasurer from the pay of such deceased member and paid into the Relief and Pension Fund; but the provisions of this section shall not apply to any member of the department who shall have received any pension under the terms of this chapter.

SEC. 7. The Commissioners shall make rules and regulations to carry out the provisions of this chapter

and to enforce compliance therewith on the part of the members of the department. It shall make up an estimate every year of the amount required to pay all demands on the Police Relief and Pension Fund for the succeeding fiscal year, and certify the same to the Supervisors in connection with and as a part of the annual appropriation of the Police Department.

SEC. 8. The Commissioners may, on notice to the Chief of Police, reward any member of the department for conduct which is heroic or meritorious. The form or the amount of such reward shall be discretionary with the board; but it shall not exceed in any one instance one month's salary.

SEC. 9. The Board of Police Pension Fund Commissioners shall hold quarterly meetings on the first Mondays of April, July, October and January of each year, and upon the call of its president. It shall issue warrants, signed by its president and secretary, to the persons entitled thereto, for the amount of money ordered paid to such persons from the Relief and Pension Fund. Each warrant shall state for what purpose the payment is made.

The Board of Police Pension Fund Commissioners shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payment from the Relief and Pension Fund, stating the amounts of such payments, and for what granted. Such list shall be certified and signed by the president and secretary of the board. The Auditor shall thereupon enter a copy of such list upon a book to be

kept for that purpose which shall be known as The Police Relief and Pension Fund Book. All warrants signed by the president and secretary of the board shall be presented to the Auditor, and be audited and ordered paid by him out of said fund.

SEC. 10. The Board of Police Pension Fund Commissioners shall possess the powers vested in the Board of Police Commissioners to make rules and regulations for its guidance. It may appoint a secretary, and provide for the payment from said fund of all its necessary expenses, not exceeding fifty dollars for any one month, including the salary of the secretary and printing. No compensation shall be paid to any member of the board for any duty required or performed as Police Relief and Pension Fund Commissioner.

SEC. 11. The Supervisors shall annually, when the tax levy is made, direct the payment into the aforesaid fund of the following moneys:

1. Not less than five nor more than ten per centum of all moneys collected and received from licenses for the keeping of places where spirituous, malt or other intoxicating liquors are sold.

2. One-half of all moneys received from taxes or from licenses upon dogs.

3. All moneys received from fines imposed upon members of the Police Department for violation of law or the rules or regulations thereof.

4. All proceeds of sales of unclaimed property.

5. Not less than one-fourth nor more than one-half of all moneys received from licenses from pawnbrokers,

billiard hall keepers, dealers in second-hand merchandise, and from junk stores.

6. All moneys received from fines for carrying concealed weapons.

7. Twenty-five per centum of all fines collected in money for violation of any ordinance.

8. All rewards to members of the Police Department, except such as shall be excepted by the Commissioners.

9. The Treasurer shall retain from the pay of each member of the police force two dollars a month, which shall be forthwith paid into the Police Relief and Pension Fund. No other or further retention or reduction shall be made from such pay for any other fund or purpose unless the same is herein authorized.

SEC. 12. When a request is made for regular policemen to be detailed at any place of amusement or entertainment, ball, party or picnic, the party or person making such request shall first deposit two dollars and fifty cents for each man so detailed with the Property Clerk of the department, who shall give him a receipt for the same, and such sum shall be at once paid into the treasury to the credit of the Police Relief and Pension Fund.

SEC. 13. On the last day of June of each year, or as soon thereafter as practicable, the Auditor shall make a report to the Supervisors of all moneys paid out of such fund during the previous year, and of the amount then to the credit of such fund. The surplus then remaining in such fund exceeding the average annual amount paid out of such fund during the three years next preceding shall be transferred to and become a part of the surplus fund, and shall be no longer under the control of the

board, or subject to its order. Payments provided for in this chapter shall be made quarterly upon proper vouchers. When in any one year a deficiency shall exist in such fund, such deficiency shall be provided for and made good by the Supervisors in their next ensuing tax levy.

ARTICLE IX.

FIRE DEPARTMENT.

CHAPTER I.

Organization and Powers.

SECTION 1. The Fire Department shall be under the management of a Board of Fire Commissioners consisting of four members, who shall be appointed by the Mayor, and each of whom shall receive an annual salary of twelve hundred dollars. No person shall be appointed a Fire Commissioner who shall not have been an elector of the city and county for at least five years next preceding his appointment.

Fire department.—*Laws governing.*—Act of March 2, 1866, (Stats. 1865-6, 138); Act of April 1, 1872, (Stats. 1871-2, 855); Act of March 30, 1874, (Stats. 1873-4, 942); Act of March 4, 1870, (Stats. 1869-70, 303); Act of April 2, 1866, (Stats. 1865-6, 866); Act of March 30, 1872, (Stats. 1871-2, 703); Act of March 4, 1881, (Stats. 1881, 25); Act of March 3, 1897, (Stats. 1897, 54); Act of March 4, 1897, (Stats. 1897, 61); Act of March 27, 1897, (Stats. 1897, 192).

The fire department is not a mere voluntary association, but is a branch of the municipal government. *People v. Board of Delegates*, 14 Cal. 479; *People v. Newman*, 96 Cal. 605.

The city is not liable for acts of negligence committed by members of the fire department, while engaged in duties pertaining to the department. *Howard v. San Francisco*, 51 Cal. 52.

The ordinance of the City and County of San Francisco popularly known as the "Barry Ordinance," assuming to establish and regulate the fire department, and to provide for the appointment of a board of fire commissioners, is void, as being in con-

flict with the charter of the city. *People v. Newman*, 96 Cal. 605.

Fire commissioners.—The fire department is a distinct branch of the city government, represented by the board of fire commissioners, and the board of supervisors has no authority to reorganize or overthrow the board of fire commissioners. *People v. Newman*, 96 Cal. 605.

The act of March 28, 1878, provided for the appointment of fire commissioners by the judge of the county court, and it was held that, since his appointing functions were superseded by the Constitution of 1879, and not vested in any other person or tribunal, the officers thus appointed would hold over until their successors were appointed and qualified, and that the governor had no power to make such appointment. *People v. Edwards*, 93 Cal. 153; *People v. Newman*, 96 Cal. 605.

The Legislature may confer the power of electing a fire commissioner upon a board of fire underwriters, which is a voluntary association of persons and not a corporation. *In re Bulger*, *In re Merrill*, 45 Cal. 553.

SEC. 2. The board shall never be so constituted as to consist of more than two members of the same political party. The term of office of the Commissioners shall be four years. Those first appointed shall so classify themselves by lot that they shall respectively go out of office at the expiration of one, two, three and four years.

SEC. 3. The Commissioners shall be successors in office of the Fire Commissioners holding office in the city and county at the time this charter shall go into effect by virtue of appointment under any statute or law of this state.

SEC. 4. The Commissioners shall organize by electing one of their number president who shall hold office

for one year. The board may appoint a secretary who shall perform such duties as the board may prescribe. He shall receive an annual salary of twenty-four hundred dollars. The board shall meet at least once a week, and as often as the business of the Department may require, and all its meetings shall be public.

SEC. 5. The board shall organize the department, create and establish such fire companies as it may deem necessary, prescribe the number and duties of the officers, members and employees of the department, and the uniforms and badges to be worn by them; have control of all the property and equipments of the department, and exercise full power and authority over all appropriations made for the use of the department.

SEC. 6. All persons appointed to positions in the department must be citizens of the United States, not less than twenty-one nor more than thirty-five years of age, of good character for honesty and sobriety, able to read and write the English language, residents of the city and county at least five years next preceding the date of their appointment, must pass a medical examination under such rules and regulations as may be prescribed by the Commissioners, and upon such examination be found in sound bodily health.

SEC. 7. No officer, member or employee of the department shall be appointed, transferred, or removed because of his political opinions, nor shall he be transferred or dismissed except for cause, nor until after a trial before the Commissioners.

SEC. 8. The Commissioners shall see that the officers, members and employees of the department faithfully discharge their duties, and that the laws, ordinances and regulations pertaining to the department are carried into effect. The board shall make such rules and regulations as may be necessary to secure discipline and efficiency in the department, and for any violation of such rules and regulations may impose reasonable fines upon the officers, members and employees of the department, or may suspend any of them for such reasonable time as the board may by rule prescribe. Such fines shall be deducted from the monthly warrants of the officers, members and employees upon whom they are imposed, and shall be transferred by the treasurer to the Firemen's Relief and Pension Fund.

SEC. 9. The clerk and commissary of the Fire Department Corporation Yards shall not deliver any supplies or stores of the Fire Department except upon an order signed by the Chief Engineer and the secretary of the Commissioners; but during a conflagration, such material or apparatus as may be required for the purpose of extinguishing such conflagration may be withdrawn from said corporation yards by order of the Chief Engineer, or by any officer in charge of the force of the department at such conflagration.

SEC. 10. No member or employee of the Fire Department shall be engaged in any other employment.

CHAPTER II.

Duties of the Commissioners.

SECTION 1. The Board of Fire Commissioners shall immediately after their appointment and qualification proceed to reorganize the Fire Department in conformity with the provisions of this charter. In so doing the board shall make its appointments of officers and members from the persons constituting the force in the service of the Fire Department at the time this charter goes into effect. Such officers and members shall not be required to pass any civil service examination. All future appointments and promotions shall be made subject to the provisions of article XIII of this charter. If any reduction is made in the force of the department, the Commissioners may temporarily discharge those persons, whose discharge shall be most conducive to the efficient reorganization of the department, but in case of a subsequent increase of the force, those temporarily discharged shall be reappointed without civil service examination and assigned to the same rank in which they were at the time of their discharge.

SEC. 2. No officer, member or employee of the department shall be dismissed or transferred except for cause nor until after a trial. The accused shall be furnished with a written copy of the charges against him at least three days previous to the day of trial. He shall have the right to appear in person and by counsel and examine witnesses in his behalf. All witnesses shall be examined under oath, and all trials shall be public.

SEC. 3. When any officer, member or employee of the department shall become temporarily disabled by rea-

son of injuries received while in the actual performance of his duty therein so as to incapacitate him from performing his duty, the Commissioners shall allow his salary during the continuance of such temporary disability.

SEC. 4. The Commissioners shall see that all contracts awarded and work done for the department are faithfully performed, and shall, upon the awarding of any such contract, exact an adequate bond for the prompt and faithful performance of the same.

The provisions of article II, chapter III, of this charter in regard to the advertising for proposals, the affidavit and security accompanying the same, the presentation and opening of proposals, the awarding of contracts and the security for the performance thereof, shall, so far as the same can be made applicable, apply to all proposals and contracts made, awarded or entered into for furnishing supplies to the Fire Department. Any contract made in violation of any of the provisions of this chapter shall be void.

CHAPTER III.

The Chief Engineer.

SECTION 1. The Board of Fire Commissioners shall appoint a Chief Engineer, who shall be charged with the special duty of superintending the extinguishment of fires. The Chief Engineer shall be the chief executive officer of the Fire Department, and it shall be his duty and that of the assistant chief engineers and of the battalion chiefs to see that all laws, orders, rules and regulations in force in the city and county, or made by the

Commissioners' concerning the Fire Department, are enforced.

Chief engineer. —When a chief of the fire department has no right or authority except such as he has acquired under the ordinances of the city, he may be removed or suspended by the action of the legislative body of the city. *Higgins v. Cole*, 100 Cal. 260.

SEC. 2. The Chief Engineer may suspend any subordinate officer, member, or employee of the department for incompetency, or for any violation of the rules and regulations of the Fire Department, and shall forthwith report in writing such suspension, with his reasons therefor, to the Commissioners for their action. He shall diligently observe the condition of the apparatus and workings of the department and report in writing thereon at least once a month to the board and make such recommendations and suggestions respecting the same as he may deem proper. In the absence or inability of the Chief Engineer, an assistant chief engineer shall perform his duties.

SEC. 3. The Chief Engineer, or, in his absence, the assistant chief engineers, or, in their absence, any battalion chief in charge may, during a conflagration, cause to be cut down or otherwise removed any buildings or structures for the purpose of checking the progress of such conflagration.

CHAPTER IV.

Fire Companies.

SECTION 1. Each steam fire engine company shall be composed of not more than one captain, one lieutenant,

ant, one engineer, one driver, one stoker and five hose-men.

Each hook and ladder company shall be composed of not more than one captain, one lieutenant, one driver, one tillerman and eight truckmen.

Each chemical engine company shall be composed of not more than one captain, one lieutenant, one driver and one hoseman.

Each water tower company shall be composed of not more than one captain, one driver and one hoseman.

Each fire boat company shall be composed of not more than one captain, one lieutenant, one engineer, one assistant engineer, two firemen, one pilot and twelve hose-men.

CHAPTER V.

Fire Marshal.

SECTION 1. The Board of Fire Commissioners, on the written recommendation of the board of directors of the corporation known as the Underwriters' Fire Patrol of San Francisco, may appoint such persons as may be recommended by said board of directors as Fire Marshal and assistant fire marshal. Vacancies occurring in the office of Fire Marshal or assistant fire marshal shall be filled in the same manner. The salaries of said Fire Marshal and of his assistant and deputies shall be fixed and paid by said board of directors of said Underwriters' Fire Patrol of San Francisco, and in no event shall the city and county be liable therefor or for any part thereof.

The marshal.—The fire marshal was formerly appointed by the board of supervisors. Act of February 14, 1866, (Stats. 1865-6, 79).

As to the fire patrol, see: Act of April 1, 1876, (Stats. 1875-6, 689); Act of March 29, 1897, (Stats. 1897, 223).

SEC. 2. The Fire Marshal or, in case of his disability, the assistant fire marshal shall attend all fires which may occur in the city and county, and he shall take charge of and protect all property which may be imperiled thereby.

SEC. 3. The Fire Marshal may call upon policemen during the time of any fire for the purpose of protecting property until the arrival of the owner or claimant thereof, and in case the owner or claimant of such property does not take charge of the same within twenty-four hours the Fire Marshal may have such property stored at the owner's or claimant's expense.

SEC. 4. The Fire Marshal shall be charged with the enforcement of all laws and ordinances relating to the storage, sale and use of oils, combustible materials and explosives, together with the investigation of the cause of all fires. In all cases where there is reason to believe that fires are the result of crime or that crime has been committed in connection therewith, the Fire Marshal must report the same in writing to the District Attorney. The Fire Marshal shall also have the care of, and may sell, subject to the orders of the Board of Fire Commissioners, all property saved from fire for which no owner can be found, and at once pay the amount realized from any such sale into the treasury. He shall exercise the functions of a police officer.

SEC. 5. The Fire Marshal shall have power to appoint deputies for inspecting buildings, but such deputies shall receive no compensation for their services from the city and county.

CHAPTER VI.

Fire Wardens.

SECTION 1. The Chief Engineer, assistant chief engineers, battalion chiefs and the Fire Marshal shall constitute a Board of Fire Wardens, with power to inspect and report to the Board of Public Works as to the safety of buildings and other structures within the city and county.

CHAPTER VII.

Firemen's Relief Fund.

SECTION 1. In order to continue in force and make effectual pensions already existing in favor of firemen, a fund is hereby created to be known and designated as the Firemen's Relief Fund. The Board of Fire Commissioners of the city and county and its successors in office shall constitute a board of trustees of said fund. The board shall be known as the Board of Fire Pension Fund Commissioners.

Firemen's relief fund.—*Laws Governing.*—Act of March 11, 1889, (Stats. 1889, 108); Act of March 26, 1895, (Stats. 1895, 107); Act of March 3, 1885, (Stats. 1885, 13).

The act of March 3, 1885, requiring the agents of foreign insurance companies doing business in California to pay to the treasurer of the county, or city and county, a certain proportion

of the premiums received or contracted for by them, and providing that the money so paid should constitute a fireman's relief fund, was held to be a charge for the purpose of revenue and a municipal tax, and in violation of section 12 of article XI of the Constitution, and not a valid police regulation. *San Francisco v. Liverpool etc. Ins. Co.*, 74 Cal. 113.

As to the police relief fund, see chapter X of article VIII of this charter.

SEC. 2. There shall be annually levied, collected and apportioned to the Firemen's Relief Fund a tax sufficient to meet and pay all demands upon said fund, for the purposes set out in this chapter.

SEC. 3. The Commissioners may, by a unanimous vote, retire and relieve from service any aged, infirm or disabled fireman of the department who has arrived at the age of sixty-five years, and who, upon an examination by two regularly certificated practicing physicians appointed by the Commissioners for that purpose, may be ascertained to be by reason of such age, infirmity or other disability, unfit for the performance of his duties. Such retired fireman shall receive from the Firemen's Relief Fund a monthly pension equal to one-half of the amount of the salary attached to the rank held by him three years prior to the date of his retirement. No such pension shall be paid unless such person has been an active member of the Fire Department for twenty years continuously next preceding his retirement, and the same shall cease at his death.

SEC. 4. Any member of the Fire Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty, upon

his filing with the Commissioners a verified petition setting forth the facts constituting such disability and the cause thereof, accompanied by a certificate signed by the Chief of the Fire Department, the captain of the company to which he belongs, and by two regularly certificated physicians of the city and county, recommending his retirement upon a pension on account of such disability, may be retired from the department upon an annual pension equal to one-half the amount of salary attached to the rank which he may have held three years prior to the date of such retirement, to be paid to him during his life and to cease at his death. In case his disability shall cease his pension shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement.

SEC. 5. The Commissioners shall, out of the Firemen's Relief Fund, provide as follows for the family of any officer, member, or employee of the Fire Department who may be killed while in the performance of his duty:

First—Should the decedent be married, his widow shall as long as she may remain unmarried be paid a monthly pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death.

Second—Should the decedent leave no widow, but leave an orphan child or children under the age of sixteen years, such children shall collectively receive a pension equal to one-half the salary attached to the position held by their father at the time of his death, until the youngest attains the age of sixteen years.

Third—Should the decedent leave no widow and no orphan child or children, but leave a parent or parents

depending solely upon him for support, such parents, so depending, shall collectively receive a pension equal to one-half the salary attached to the position held by the decedent at the time of his death during such time as the Commissioners may unanimously determine its necessity.

SEC. 6. Any person receiving a pension from the Firemen's Relief Fund, who shall be convicted of felony, or who shall become dissipated, an habitual drunkard, or who shall become a non-resident of this state, shall forfeit all right to said pension.

SEC. 7. The Commissioners shall make rules and regulations to carry out the provisions of this chapter and to enforce compliance therewith on the part of the members of the department. It shall make up an estimate every year of the amount required to pay all demands on the Firemen's Relief Fund for the succeeding fiscal year, and certify the same to the Supervisors in connection with and as a part of the annual appropriation for the Fire Department.

SEC. 8. The Board of Fire Pension Fund Commissioners shall hold quarterly meetings on the first Mondays of April, July, October and January of each year, and upon the call of its president. It shall issue warrants, signed by its president and secretary, to the persons entitled thereto, for the amount of money ordered paid to such persons from the Firemen's Relief Fund. Each warrant shall state for what purpose the payment is made.

The Board of Fire Pension Fund Commissioners shall keep a public record of its proceedings. It shall at each

quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payment from the relief fund, stating the amounts of such payments and for what granted. Such list shall be certified and signed by the president and secretary of the board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose which shall be known as the Firemen's Relief Fund Book. All warrants signed by the president and secretary of the board shall be presented to the Auditor, and be audited and ordered paid by him out of said fund.

SEC. 9. The Board of Fire Pension Fund Commissioners shall possess the powers vested in the Board of Fire Commissioners to make rules and regulations for its guidance. It may appoint a secretary and provide for the payment from said fund of all its necessary expenses, not exceeding fifty dollars for any one month, including the salary of the secretary and printing; but no compensation shall be paid to any member of the board for any duty required or performed as Fire Pension Fund Commissioner.

CHAPTER VIII.

Salaries.

SECTION 1. The officers and members of the Fire Department shall receive annual salaries as follows:

Chief engineer, four thousand dollars; first assistant chief engineer, three thousand dollars; second assistant engineer, twenty-four hundred dollars; battalion chiefs,

each twenty-one hundred dollars; superintendent of engines, eighteen hundred dollars; the clerk and commissary of the corporation yards, fifteen hundred dollars; captains, each fourteen hundred and forty dollars; lieutenants, each twelve hundred dollars; engineers, each thirteen hundred and fifty dollars; drivers, stokers, tilermen, truckmen, hosemen, and stewards, for the first year of service, each nine hundred and sixty dollars; for the second year of service, each ten hundred and eighty dollars; and for the third year of service and thereafter each twelve hundred dollars; hydrantmen, each ten hundred and eighty dollars; superintendent of horses, twelve hundred dollars; draymen, each nine hundred dollars; hostlers, each seven hundred and twenty dollars; watchmen, each nine hundred dollars; pilots of fire boats, each twelve hundred dollars; engineers of fire boats, each fifteen hundred dollars; assistant engineers of fire boats, each fourteen hundred and forty dollars; firemen of fire boats, each nine hundred dollars.

CHAPTER IX.

Department of Electricity.

SECTION 1. There is hereby created a Department of Electricity, which shall have charge of the construction and maintenance of the fire alarm and police telegraph and telephone systems, and shall be under the control of a joint commission composed of the Board of Fire Commissioners and the Board of Police Commissioners.

SEC. 2. There shall be appointed by the Board of Fire Commissioners and Board of Police Commissioners, acting in joint session, a practical and skilled elec-

trician, who shall be called the Chief of the Department of Electricity, and who shall have general supervision of the Department of Electricity. He shall receive an annual salary of twenty-four hundred dollars.

SEC. 3. The joint commission may appoint such assistants as may be necessary to keep the electric and telephone systems in working order; but of those assistants appointed, no operator or inspector shall receive more than twelve hundred dollars a year, and no repairer, lineman, batteryman or instrument-maker shall receive a salary of more than ten hundred and eighty dollars a year.

SEC. 4. The Fire Department and the Police Department shall each have sole control over its own systems and wires.

SEC. 5. Any citizen, firm or corporation may, for the purpose of police or fire protection, be connected with the police or fire signal system, or telephone or telegraph system, upon making fair payment for the connection and use of the same. Such rates of payment shall be fixed by ordinance of the Supervisors; but no connection shall be made so as to interfere with the use of the main line.

SEC. 6. The Department of Electricity is also charged with the duty of enforcing all the rules, regulations, orders and requirements made by ordinance of the Supervisors in regard to the inspection and supervision of electrical wires and appliances, and the currents for furnishing light, heat or power in and upon streets and buildings in the city and county.

ARTICLE X.

DEPARTMENT OF PUBLIC HEALTH.

SECTION 1. There shall be a Department of Public Health under the management of a Board of Health. The board shall consist of seven members, five of whom shall be appointed by the Mayor, and who shall be regularly certificated physicians of the city and county at the time of their appointment, and who must have been such for at least five years next preceding their appointment. The Chief of Police and the president of the Board of Public Works shall be members of the board by virtue of their office.

The members of the board shall serve without compensation. They shall elect one of their number president, and adopt such rules and regulations as may be necessary for the government of the board.

Public health.—*Laws governing.*—Political Code, secs. 3004-4035; Act of March 15, 1883, (Stats. 1883, 376); Act of March 16, 1876, (Stats. 1875-6, 305); Act of April 25, 1863, (Stats. 1863, 540), sec. 1, subdiv. 2; Act of March 12, 1895, (Stats. 1895, 45); Act of March 15, 1883, (Stats. 1883, 366); Act of March 3, 1885, (Stats. 1885, 12); Act of February 20, 1889, (Stats. 1889, 32); Act of April 1, 1878, (Stats. 1877-8, 1050).

By the provisions of the Political Code above cited, which purport to provide "health and quarantine regulations for the City and Harbor of San Francisco," a board of health is established, which has authority to appoint a health officer, not only for the City and County of San Francisco, but also for the *port* of San Francisco (sec. 3009); the quarantine grounds of the bay and harbor are fixed at Sausalito, Marin County (sec. 3004);

the board appoints a quarantine officer (sec. 3009); all vessels coming into the harbor with cholera, small-pox, etc., must report to the quarantine officer (sec. 3013); and the board may provide and maintain suitable hospitals at Sausalito (sec. 3022).

Under these provisions it was held that the board may exercise authority, not only in San Francisco, but in all the counties including any part of San Francisco Bay, and especially in Marin County. *People v. Perry*, 79 Cal. 105, 111.

The charter makes no provision, (and could not), as to the duties of the board as to quarantine. On the other hand, all the powers vested in the board created by the charter are granted to the board created by these provisions of the Political Code. As the charter can have no effect upon officers whose duties extend outside of the limits of the city and county, and as the matter of public health within those limits is in all probability a "municipal affair," (See Intro., p. 19), it follows that these two boards will co-exist,—the one created by the Political Code still exercising its general quarantine functions, but not any local functions, while the local functions heretofore exercised by the old board will be exercised by the one created by the charter.

SEC. 2. The appointive members of the board shall hold office for four years. Those first appointed under this charter shall so classify themselves by lot that one of them shall go out of office at the end of one year, one at the end of two years, one at the end of three years, and two at the end of four years.

Term of members of board of health.—The members of the board of health are officers within the meaning of article XI, section 7, of the former Constitution, and of article XX, section 16, of the new; and a statute fixing their term of office at five years is unconstitutional, and leaves the duration of the term unfixed, and subject to the pleasure of the governor. *People v. Perry*, 79 Cal. 105.

Oath of members.—The oath of members of the board of health should be filed with the secretary of state and county

clerk; but if filed with the secretary of state, failure to also file it with the county clerk is not such a refusal or neglect to file the oath as will forfeit the office. *People v. Perry*, 79 Cal. 105.

SEC. 3. The board shall have the management and control of the city and county hospitals, almshouses, ambulance service, municipal hospitals, receiving hospitals, and of all matters pertaining to the preservation, promotion and protection of the lives and health of the inhabitants of the city and county; and it may determine the nature and character of nuisances and provide for their abatement.

It shall have the sanitary supervision of the municipal institutions of the city and county, including jails, schoolhouses and all public buildings; of the disposition of the dead; of the disposition of garbage, offal and other offensive substances.

Except as provided in article II, chapter III, of this charter, it shall have exclusive control and disposition of all expenditures necessary in the institutions under its immediate control.

Nuisances.—As to the authority of the board to determine the nature and character of nuisances and provide for their abatement, see: sec. 1 subdivs. 1 and 6, ch. II, art. II, of this charter; *Ex parte Shrader*, 33 Cal. 279; Political Code, sec. 3028. See also sec. 4 of this chapter.

As to hospitals, etc., see sec. 1, subdiv. 11, ch. II, art. II, of this charter.

SEC. 4. The board shall enforce all ordinances, rules and regulations which may be adopted by the Supervisors for the carrying out and enforcement of a good sanitary condition in the city and county; for the protection of the public health; for determining the nature and

character of nuisances and for their abatement; and for securing the proper registration of births, deaths and other statistical information. It shall from time to time submit to the Supervisors a draft of such ordinances, rules and regulations as it may deem necessary to promote the objects mentioned in this section.

Sanitary ordinances: sec. 1, subdivs. 1 and 6, ch. II, art. II, of this charter.

Nuisances: Political Code, sec. 3028, and sec. 3 of this chapter.

Registration of births, etc.: Political Code, secs. 3023-3025.

SEC. 5. The board may appoint such officers, agents and employees as may be necessary for the proper and efficient carrying out and enforcement of the purposes and duties of the board, and may fix their salaries and prescribe their duties. All appointments in the department shall be made under the provisions of article XIII of this charter, and no person so appointed by the board shall be removed without cause.

Political Code, secs. 3009-3010.

SEC. 6. The board may appoint a resident physician of the city and county hospital, who must be a regularly certificated physician and who must have been a resident of the city and county for at least five years next preceding his appointment. He shall devote his time exclusively to the duties of his office:

Political Code, secs. 3009-3010.

SEC. 7. The board shall appoint for the city and county hospital at least two visiting physicians and at least two visiting surgeons, who shall receive no com-

pensation for their services, but who shall have the privilege of teaching students in their hospital wards. Any student who is actively engaged in the study of medicine shall have the benefit of clinical instruction in any of the hospital wards.

Political Code, secs. 3009-3010.

SEC. 8. The board may set aside one ward in the city and county hospital for the treatment of confirmed inebriates.

SEC. 9. The board may appoint such undergraduates and other internes to the city and county hospital as it may deem necessary. They shall be appointed after a competitive examination by the board in any or all branches of medicine and surgery, and shall receive board and lodging free for their services. They shall be under the control and direction of the resident physician, who may remove any of them for neglect of duty, or for other good and sufficient cause, subject to an appeal to, and final decision by, said board.

SEC. 10. The board shall fix annually the salaries of all officers and employees of the board. Such compensation shall not exceed salaries paid for similar services in private institutions of like character.

Political Code, sec. 3010.

SEC. 11. The ratio of employees to inmates of any institution under the care of the board shall not exceed that maintained by private institutions of like character.

ARTICLE XI.

DEPARTMENT OF ELECTIONS.

CHAPTER I.

Board of Election Commissioners.

SECTION 1. The conduct, management and control of the registration of voters, and of the holding of elections, and of all matters pertaining to elections in the city and county, shall be vested exclusively in and exercised by a Board of Election Commissioners, consisting of five members, who shall be appointed by the Mayor, and shall hold office for four years. Each of the Commissioners shall receive an annual salary of one thousand dollars. Each member of the board must be an elector of the city and county at the time of his appointment and must have been such for five years next preceding such time. Those first appointed must, immediately after their appointment, so classify themselves by lot, that one shall go out of office at the end of one year, one at the end of two years, one at the end of three years, and two at the end of four years.

The Mayor shall not make any appointment upon the board at any time before thirty days prior to the time when such appointee is to take office. Two of the five members first appointed shall be chosen from each of the two political parties casting in the city and county the highest vote for Governor or Electors of President and Vice-President, as the case may be, at the last preceding general election. The fifth member shall be chosen from

the political party casting the third highest such vote at such election, if there be such third party, and if not, then at the discretion of the Mayor. Upon the expiration of the term of office of any Commissioner, the appointee must be chosen from the same political party as the retiring Commissioner, consistently with the foregoing provisions as to equal representation at all times of the two political parties casting the highest vote at the general election last preceding the appointment in question as prescribed in this section.

Election commissioners.—Act of March 18, 1878, (Stats. 1877-8, 299); Act of March 28, 1895, (Stats. 1895, 341); Political Code, secs. 1075-1080.

The provisions of the Political Code cited above were declared unconstitutional in so far as they provide for boards of election commissioners in cities and cities and counties having one hundred and fifty thousand or more inhabitants, on the ground that they constituted an improper attempt to create a class of municipal corporations for a special purpose, without reference to the existing classification by general laws, and are local and special. *Denman v. Broderick*, 111 Cal. 96.

The board of election commissioners in and for the City and County of San Francisco in office at the time of the first election under this charter shall manage, conduct, and control such election. (Schedule.)

SEC. 2. No member of the board, nor Registrar, nor deputy registrar shall, during his term of office, be a member of any convention the purpose of which is to nominate candidates for office; nor be eligible to any other municipal office during the term for which he shall have been appointed, or for one year thereafter; nor act as officer of any election or primary election; nor take part in any election except to vote and when acting as

Election Commissioner, at which time he shall perform only such official duties as may be required of him by law and by this charter.

SEC. 3. The Commissioners shall organize within ten days after their appointment by choosing one of their number president. In case of failure to agree, he shall be selected by lot. He shall hold office for one year and until his successor is chosen. The board shall appoint a Registrar of Voters who shall receive an annual salary of twenty-four hundred dollars. The Registrar shall be the secretary of the board, and shall keep a record of its proceedings, and shall execute all orders and enforce all rules and regulations adopted by the board. The term of office of Registrar shall be four years.

SEC. 4. The board may appoint such other clerical assistants as may be necessary at a salary not to exceed one hundred dollars a month each for the time actually employed. The board shall, by resolution adopted by a majority vote of all its members and entered upon its minutes, designate the service to be rendered by such assistants and the time for which they shall be employed. The time of employment of such assistants shall not be extended except by like resolution of the board, and when a salary shall have been once fixed it shall not be increased. This section is subject to the provisions of article XIII of this charter.

As to the appointment of clerks and assistants, see: *Falk v. Reis*, 88 Cal. 514; *Schmitt v. Dunn*, 55 Cal. 651; *Meyers v. Pond*, 86 Cal. 64; *Lewis v. Widber*, 99 Cal. 412.

SEC. 5. All provisions of the general laws of this state respecting elections shall be applicable to all elec-

tions held in the City and County of San Francisco. All provisions of the general laws of this state respecting the registration of voters shall be applicable to such registration in the city and county. The Board of Election Commissioners must provide for precinct registration so far as it can do so under the Constitution and laws of the state.

Registration of voters.—The charter makes provision for a board of election commissioners, and provides that they shall appoint a registrar; but it makes no provision, except as above, for the registration of voters. It also provides that the first election under the Charter “shall be managed, conducted, and controlled by the Board of Election Commissioners in and for said city and county in office at the time of such election.” (Schedule.) It therefore follows that registration at the first election under the charter is to be conducted by the board of election commissioners created by the general laws of the state, and not by the board created by the charter; and that such registration at the first and all subsequent elections is to be made in the manner provided by the general laws of the state. As some question has been raised as to the validity of these provisions, they will be considered somewhat at length.

It may be premised that the charter might undoubtedly have provided a complete system of registration of voters at the municipal elections to be held in the city and county. The matter of the election of municipal officers is undoubtedly a “municipal affair” within the meaning of section 6 of article XI of the Constitution (See Intro., p. 19); and, by section 8½ of that article, express authority is conferred to provide, in the charter, for the election of the “county officers” within the city and county. But while the charter might have made such a provision, it does not follow that, if the charter has not expressly done so, or has expressly referred the matter to the general laws, the general laws of the state on the subject will not apply to the City and County of San Francisco. The only effect of section 6 of article XI of the Constitution is that the charter shall not be *sub-*

ject to the general laws of the state in municipal affairs. But there is nothing in this to prevent a general law upon a "municipal affair" applying to the city and county where the charter is silent on the subject or expressly refers the matter to the general laws.

It is objected to the validity of this provision, that the matter of registration is left to the general laws of the state, and that, in fact, there is no general law which permits registration in the *odd*-numbered years. The provisions of the Political Code on this subject apply only to general elections (sec. 1094). "General elections" are defined by section 1041 of the Political Code to be elections held in the *even*-numbered years.

This section of the Charter may be given either one of two constructions: *first*, that the matter of registration is left entirely to the provisions of the general laws of the state; or *second*, that whatever laws the Legislature has passed or may pass on this subject as to other elections shall apply to municipal elections, as if such laws were expressly set out in the charter.

As to the first construction, (which we have shown above would be perfectly valid,) if it should appear that the Legislature had in fact made no provision for registration in the odd-numbered years, then, of course, no registration could be had. But there would be nothing to prevent the Legislature at the present session from passing a general law to cover the case; and such a law, even under this construction, would apply to the city and county.

As to the second construction, (which seems to be the only true construction of the provision,) we find no difficulty in reaching the same result. The effect of this construction would simply be that the Legislature has said that certain details as to registration shall be observed in certain elections, and that the charter, instead of copying those details, simply says they shall be applicable to the elections under the charter. No objection to such a provision can be imagined. Moreover, in case the present law on the subject should be repealed, or in case a new law should be passed at the present session, then, under this construction also, the provision of the charter would immediately operate upon

such statute, and it would become "applicable to such registration in the city and county."

As to the provision that the first election shall be managed by the old board of election commissioners (Schedule), it is believed that it is also valid. The power to adopt a charter must in the nature of the case include the power to provide the necessary machinery for putting it into operation. For the purpose of the first election (and this undoubtedly includes registration), the charter is already in force (Schedule), and has designated a certain board to conduct the first election under it.

CHAPTER II.

Municipal Elections.

SECTION 1. There shall be held in the City and County of San Francisco on the first Tuesday after the first Monday of November in the year one thousand eight hundred and ninety-nine, and in every second year thereafter, an election to be known as the municipal election.

At said elections there shall be elected by the electors of the city and county the following officers: the Mayor, eighteen Supervisors, an Auditor, Treasurer, Assessor, Tax Collector, Recorder, City Attorney, District Attorney, Public Administrator, County Clerk, Sheriff, Coroner, and four Police Judges. Each of the above officers shall be elected for two years, except the Police Judges and the Assessor, each of whom shall be elected for four years. The Superintendent of Public Schools shall be elected for four years, and the Justices of the Peace for two years, at the same time that members of the Legislature are elected.

Elections.—*Laws governing.*—The matter of election of municipal officers in the City and County of San Francisco was

formerly provided for by the act of April 22, 1861, (Stats. 1861, 214), which was repealed by the act of April 2, 1866, (Stats. 1865-6, 718), which was in turn amended by the act of March 30, 1872, (Stats. 1871-2, 729). These acts provided for holding elections in the odd-numbered years. The Constitution of 1879 contained the following provisions relative to the election of municipal officers:

Art. XXII, sec. 10: "In order that future elections in this state shall conform to the requirements of this Constitution, the terms of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as fixed by law or by this Constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law."

Art. XX, sec. 20: "Elections of the officers provided for by this Constitution, except at the election in the year 1879, shall be held on the even-numbered years next before the expiration of their respective terms."

Art. XI, sec. 5: "The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of boards of supervisors, sheriffs, county clerks, district attorneys, and such other county, township, and municipal officers as public convenience may require."

Under these provisions it was contended that the Constitution required the municipal officers of the City and County of San Francisco to be elected in the even-numbered years. But it was held that the provisions of section 10 of article XXII of the Constitution did not apply to county, township, or municipal officers, and that the municipal officers of the City and County of San Francisco would continue to be elected as before the adoption of the Constitution and until the Legislature should pass a general law, such as required by section 5 of article XI of the Constitution. *Barton v. Kalloch*, 56 Cal. 95; *In re Stuart*, 53 Cal. 745.

In 1881, the Legislature passed such an act, commonly known as the "Hartson Act," act of March 7, 1881, (Stats. 1881, 74).

which provided for holding the municipal election in the even-numbered years. This act was held to be a general law and to supersede the charter of the City and County of San Francisco. *Staudé v. Election Com'rs*, 61 Cal. 313. But see *Wood v. Election Com'rs*, 58 Cal. 561.

The constitutionality of the act was attacked on the ground that it caused an extension of the terms of the officer "beyond the period for which he is elected or appointed." (Cal. Con., art. XI, sec. 9.) The constitutionality of the act was sustained by a divided court on the ground that it did not directly have that effect, but only by reason of the provision of the Code that officers are entitled to hold their respective offices until their successors qualify, and that, if either of the provisions were unconstitutional, it was the code provision. *Treadwell v. Yolo Co.*, 62 Cal. 563.

In 1893, the Legislature passed a general County Government Act, providing for the election of county officers every four years. This act was held constitutional in *Hale v. McGettigan*, 114 Cal. 112.

Under this act it was held that in the City and County of San Francisco those officers who exercise only such powers as are given by laws relating merely to counties, and who do not derive their authority from the Consolidation Act, are to be regarded as county, as distinguished from municipal, officers, and that their term of office and the time of their election is determined by the County Government Act; and that other officers of the city and county, who derive their authority from the act of 1866, are municipal officers, and not subject to the County Government Act. *Kahn v. Sutro*, 114 Cal. 316.

Charter provisions.—The charter provides, in effect, that there shall be an election for all municipal officers except justices of the peace, police judges, and superintendent of schools, in the *odd*-numbered years; that all the officers of the city and county, except police judges, assessor, and superintendent of public schools, shall be elected for two years; that the justices of the peace and superintendent of public schools shall be elected in the *even*-numbered years; and that all officers, except the justices

of the peace and superintendent of public schools, who were elected in 1898, shall hold office until January 1, 1900.

County officers.—It is doubtful whether or not the city and county would have any authority to provide for the election of county officers under the decision in *Kahn v. Sutro*, 114 Cal. 316, except for the power granted by the amendment to the Constitution in 1896 adding section 8½ to article XI. This section provides that such charter may “provide for the manner in which, the times at which, and the terms for which, the several *county officers* shall be elected or appointed.”

Police judges.—Prior to the adoption of the constitutional amendment adding section 8½ to article XI, it was held that it was not competent for a freeholders’ charter to establish a police court, or provide for the election of a police judge. *People v. Toal*, 85 Cal. 333; *Milner v. Reibenstein*, 85 Cal. 593; *People v. Sands*, 102 Cal. 12; *Ex parte Reilly*, 85 Cal. 632; *Ex parte Giambonini*, 117 Cal. 573. Under subdivision 1 of section 8½ of article XI of the Constitution, the charter may now provide for these matters.

Justices of the peace.—The charter cannot provide for the election of justices of the peace. *People v. Toal*, 85 Cal. 333; *Milner v. Reibenstein*, 85 Cal. 593; *People v. Sands*, 102 Cal. 12; *Ex parte Reilly*, 85 Cal. 632; *Ex parte Giambonini*, 117 Cal. 573. This, however, is not material, since the manner of the election under the charter and under the general law is the same.

Superintendent of schools.—The election of the superintendent of schools is provided for by the Constitution. Cal. Con., art. IX, sec. 3.

Validity of charter provisions.—As the validity of the charter as to the election will be questioned, if at all in doubt, the following suggestions may be given:

1. As to the provision shortening the term of the officers elected in 1898, it is well settled that no one has any vested right to an office, and that the Legislature may at any time shorten the term or abolish the office altogether. 19 Am. & Eng. Ency. of Law, p. 562p*.

2. Of course, this can be done by a freeholders' charter as well as by an ordinary statute, since such charter has the effect to "supersede any existing charter and all amendments thereof, and all laws inconsistent with such charter." Cal. Con., art. XI, sec. 8. See also *Ford v. Harbor Com'rs*, 81 Cal. 19, 28.

3. It has been suggested, but not decided, that the Legislature cannot provide for the holding of an election on the *odd-numbered* years. *Barton v. Kalloch*, 56 Cal. 95, 109. In this case, Mr. Justice Ross said: "It may have been, *and probably was*, contemplated by the framers of the Constitution that when the Legislature should provide for the election of county, township, and municipal officers, it would require such election to be held upon the even-numbered years. Whether the Legislature, when it shall act, must do so, is a question not before us in this case."

4. A highly practical question arises as to the registration of voters. This matter has been fully discussed in a note to section 5 of chapter I of this article. The opinion was there expressed that the charter did provide a method for registration of voters. But even if it should be held that there was no authority for a registration of voters, still this would in no manner invalidate the provisions of the charter as to elections. Registration of voters is not at all essential to a valid election. There is no constitutional provision requiring a registration of voters, and on the contrary the courts of some of the states have held all effective registration laws unconstitutional.

5. The Hartson Act was held to be a general law and to supersede the charter of the City and County of San Francisco as to elections. *Staudé v. Election Com'rs*, 61 Cal. 313. This would still be the result, if it were not for the late amendment to section 6 of article XI of the Constitution, which exempts municipalities from the effect of general laws in "municipal affairs." The election of municipal officers would seem undoubtedly to be a "municipal affair" (see Intro., p. 19); and county officers are placed upon the same footing as municipal officers by the late amendment adding section 8½ to article XI of the Constitution.

SEC. 2. All of the officers of the City and County of San Francisco who shall be elected in the year one thousand eight hundred and ninety-eight, under existing laws, except the Superintendent of Public Schools and the Justices of the Peace, shall hold office only until the hour of noon on the first Monday after the first day of January in the year nineteen hundred.

SEC. 3. The officers first elected as aforesaid under this charter shall take office at noon on the first Monday after the first day of January following.

SEC. 4. The Mayor shall issue his proclamation and publish the same in the official newspaper for at least twenty days previous to the day in each year on which the municipal election is to be held under this charter, calling upon the electors of the city and county to meet for the purpose of electing such officers as are provided for in this charter, reciting in such proclamation the different officers to be elected at such election.

Election proclamation.—Political Code, secs. 1053-1056.

The object of the proclamation is to give notice of the election. *People v. Weller*, 11 Cal. 49; *People v. Burbank*, 12 Cal. 378.

The proclamation is necessary to the validity of the election. *People v. Porter*, 6 Cal. 26; *Kenfield v. Irwin*, 52 Cal. 164; *People v. Weller*, 11 Cal. 49; *People v. Thompson*, 67 Cal. 627; *Page v. Los Angeles*, 85 Cal. 50.

How proved: *San Luis Obispo v. White*, 91 Cal. 432.

ARTICLE XII.

ACQUISITION OF PUBLIC UTILITIES.

It is hereby declared to be the purpose and intention of the people of the city and county that its public utilities shall be gradually acquired and ultimately owned by the city and county. To this end it is hereby ordained:

SECTION 1. Within one year from the date upon which this charter shall go into effect, and at least every two years thereafter until the object expressed in this provision shall have been fully attained, the Supervisors must procure through the City Engineer plans and estimates of the actual cost of the original construction and completion by the city and county of water works, gas works, electric light works, steam, water or electric power works, telephone lines, street railroads and such other public utilities as the Supervisors or the people by petition to the board may designate.

In securing estimates of the original cost of the construction and completion of water works by the city and county, the Supervisors must procure and place on file plans and estimates of the cost of obtaining from all of the several available sources a sufficient and permanent supply of good, pure water for the city and county, in order that propositions for the acquisition, construction and completion thereof, and the incurring of municipal indebtedness therefor, may be submitted to the electors of the city and county as hereinafter set forth.

Water-works.—Water-works are for public and municipal purposes, and the Legislature may confer authority upon municipalities to erect and operate such works, or to purchase works already established, and to that end to make expenditures, levy taxes, issue bonds, and exercise the right of eminent domain. *Wayland v. Middlesex County*, 4 Gray (Mass.), 500; *Grant v. Davenport*, 36 Iowa, 396; *Attorney General v. Eau Claire*, 37 Wis. 400; *State v. Babcock*, 19 Neb. 230; *Reddall v. Bryan*, 14 Md. 444; 74 Am. Dec. 550; *Pittsburgh v. Grier*, 22 Pa. St. 54.

Gas-works.—So the city may be authorized to buy gas-works. *St. Louis v. St. Louis Gaslight Co.*, 70 Mo. 69; 5 Mo. App. 484; *Gas Co. v. Wheeling*, 8 W. Va. 320; *Pittsburgh v. Grier*, 22 Pa. St. 54.

Railroads.—A municipal corporation may be authorized to aid in the building within its limits of railroads. *Dillon on Mun. Corp.* (4th. Ed.), secs. 153 *et seq.*

Public utilities in general.—The power to acquire public utilities must be exercised within the limits as prescribed by the act conferring it. *Quincy v. Boston*, 148 Mass. 389; *Nashville v. Hagan*, 9 Baxt. (Tenn.), 495.

A municipal corporation operating water-works, gas-works, or other such enterprise, is, *quoad hoc*, a private, as distinguished from a public, corporation. *Western Sav. Fund Soc. v. Philadelphia*, 31 Pa. St. 175; *Cooley on Taxation* (2d Ed.), 688.

Such a corporation is liable for injuries resulting from the negligent construction and operation of such works by its officers and agents. *White v. Hindley Local Board*, L. R. 10 Q. B. 219; *McAvoy v. N. Y.*, 54 How. Pra. (N. Y.) 245; *Bailey v. N. Y.*, 3 Hill (N. Y.), 531; 38 Am. Dec. 669; 2 Denio (N. Y.), 433; *Levy v. Salt Lake City*, 3 Utah, 63; *Wilson v. New Bedford*, 108 Mass. 261; 11 Am. Rep. 352; *Mendel v. Wheeling*, 28 W. Va. 233; 57 Am. Rep. 665.

As to the submission of the ordinance to the vote of the people, see *Charter*, art. II, ch. I, secs. 20-21, and sec. 3 of this chapter.

SEC. 2. After such plans and estimates shall have been procured and filed, the Supervisors shall, at as early a date as they may deem for the best interests of the city and county, enter into negotiations for the permanent acquisition by the city and county, by original construction, condemnation or purchase of such or any of said public utilities as they may regard most important to the city and county to be first acquired, and to formulate and submit to the electors of the city and county, at a special election, propositions for the permanent acquisition and ownership thereof.

Before submitting propositions to the electors for the acquisition by original construction or condemnation, of public utilities, the Supervisors must solicit and consider offers for the sale to the city and county of existing utilities in order that the electors shall have the benefit of acquiring the same at the lowest possible cost thereof.

SEC. 3. When a petition or petitions signed by electors of the city and county equal in number to fifteen per centum of all the votes cast at the last preceding general election shall be presented to the Supervisors, setting forth that the signers thereof favor the acquisition by the city and county of any public utility, and requesting the board to prepare for submission to the electors of the city and county, as hereinafter provided, a proposition for the acquisition of such utility, it shall be the duty of the board to immediately take such steps or to enter into such negotiations as will enable it to formulate such a proposition for submission to the electors as aforesaid. Such proposition shall be so formulated and completed within six months from the date of the

filing of such petition. The Clerk of the Supervisors must, immediately upon the filing of the aforesaid petition or petitions, after examining and verifying the signatures thereto, transmit an authenticated copy thereof, without the signatures, to the Board of Election Commissioners, and another such copy to the Mayor, together with a certificate that the required number of signatures are appended to the original. The Mayor shall also have the right to formulate and submit to the electors a separate proposition from that formulated by the Supervisors for the acquisition of the utility named in said petition. At the next municipal election after the formulation of such propositions by the Supervisors and the Mayor, the Board of Election Commissioners shall submit to the electors the two alternative propositions. The proposition receiving a majority of the votes cast thereon shall be adopted; but in case the votes cast in favor of both propositions shall not exceed one-half the total number of votes cast thereon, both propositions shall be deemed rejected.

Nothing in this section shall be so construed as to prohibit the Supervisors from responding to the aforesaid petition of the electors requesting the acquisition of any public utility by proceeding at once, without the submission of propositions to the electors as aforesaid, to pass an ordinance declaring its determination to acquire the same as provided in section six of this article and from proceeding thereafter to acquire the same in the manner hereinafter provided.

Initiative.—In order to thoroughly understand this section, it must be read in connection with sections 20 and 21 of chapter I of article II of this charter. In the note to section 20, it was

suggested that that section was unconstitutional on the ground that it was an improper attempt to delegate legislative functions. But as to section 21, which provides that "every ordinance involving the granting by the city and county of any franchise for the supply of light or water, or for the lease or sale of any public utility . . . must be submitted to the vote of the electors," it was suggested that that section was probably valid, as it was intended that the ordinance should be first passed by the board of supervisors and simply approved by the electors. However this may be, it is believed that the provisions of this section (sec. 3) are open to most of the objections urged against section 20 of chapter I of article II. It simply provides for a species of initiative, by which an ordinance, initiated by the people, is to be passed by them without the consent, and possibly against the will, of the legislative body of the city; and, for the reasons stated in the note to section 20, it is believed that this cannot be done.

It is true that the only *direct* effect of the vote is to "determine that the public interest or necessity demands the acquisition, etc., of any public utility." (Secs. 5-6 of this chapter.) If this were the only effect of the provision, it would be perfectly valid,—so it would be perfectly useless. There can be no constitutional objection to obtaining the popular sentiment on a particular subject; but if the legislative power can disregard that sentiment, it is a useless waste of public money. If, on the other hand, it is intended that the vote shall be conclusive upon the supervisors, and that they *must* thereupon proceed according to the provisions of section 7 of this chapter, then it amounts to a legislative question being delegated to and decided by the people.

SEC. 4. In case the cost of any public utility sought to be acquired under the provisions of this article, can be paid out of the annual revenues of the city and county, in addition to the other necessary expenditures thereof, it shall be lawful to acquire the same by a majority vote of the electors voting thereon at any special election. In submitting propositions to the electors for such acqui-

tion the Supervisors shall specify in such proposition the cost of the public utility, the proposed method and manner of payment therefor, and submit to the electors the question whether the same shall be acquired upon such terms.

In case, however, the cost of such public utility sought to be acquired under the provisions of this article shall so far exceed the annual revenues of the city and county, in addition to the other necessary expenditures thereof, as to render it necessary to incur a municipal bonded indebtedness for such purpose, then the Supervisors, in submitting propositions to the electors for the acquisition thereof, shall specify therein the amount of the proposed bonded indebtedness, the rate of interest thereon, and whether such bonded indebtedness shall be incurred. At least two-thirds of the electors voting thereon at such election shall be necessary to secure such acquisition and to warrant the issuance of municipal bonds therefor, as hereinafter set forth.

Cal. Con., art. XI, sec. 18, and note to sec. 9 of chapter I of article III of this charter.

SEC. 5. When the electors by vote shall have determined, as hereinbefore set forth, to acquire any public utility, such action on the part of the electors shall be equivalent to the passing of the ordinance by the Supervisors declaring such determination as set forth in section six of this article, and the Supervisors shall proceed without delay to pass an ordinance calling a special election as required by section seven of this article.

Sec. 3 of this chapter.

SEC. 6. When the Supervisors shall determine that the public interest or necessity demands the acquisition, construction or completion of any public utility, the cost of which will be too great to be paid out of the ordinary annual income and revenue of the city and county, the Supervisors shall, by ordinance, specifically declare such determination, and shall publish the same for at least two weeks in the official newspaper.

SEC. 7. At the next regular meeting of the Supervisors after the publication of the ordinance declaring said determination as above set forth, or at an adjourned meeting thereof, or not less than two weeks nor more than four weeks after the electors by vote shall have determined to acquire any public utility, the Supervisors by ordinance shall call a special election, at which shall be submitted to the electors the proposition of acquiring such public utility, and of incurring a debt for the acquisition of the same as set forth in such ordinance. No question other than the acquisition of such utility and the incurring of the indebtedness therefor shall be submitted at such election.

Referendum. —It is believed that, when the proposition is submitted to the electors after a determination by the supervisors that the public interest demands the acquisition, the provision to submit the question to the people is perfectly valid. (See note to secs. 20-21, ch. I, art. II.) But when the only determination of the necessity is by a vote of the people, it is believed that the provision is void. (See note to sec. 3 of this chapter, and to secs. 20-21, ch. I, art. II.)

SEC. 8. The ordinance calling such special election shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated

cost of the proposed public utility, the necessity for the acquisition of the same, and that bonds of the city and county shall issue for the payment of the cost of the same as in such ordinance set forth (if the proposition be accepted by the electors), and shall fix a day on which such special election shall be held, the manner of holding such election, and the manner of voting for or against incurring such indebtedness. Such election shall be held as provided by law for holding elections in the city and county.

SEC. 9. Such ordinance shall be published daily for at least ten days in the official newspaper. At the expiration of said ten days the Supervisors shall cause to be published daily for not less than two weeks in the official newspaper a notice of such special election. Such notice shall specify the purpose for which the indebtedness is to be incurred, the number and character of the bonds to be issued, the rate of interest to be paid, and the amount of tax levy to be made for the payment thereof.

As to what is to be submitted to the voters, see *Murphy v. San Luis Obispo*, 119 Cal. 624.

SEC. 10. No indebtedness shall be incurred for the acquisition of any public utility under the provisions of this article, which, together with the existing bonded indebtedness of the city and county, shall exceed at any one time fifteen per centum of the assessed value of all real and personal property in the city and county.

SEC. 11. The bonds issued under the provisions of this article shall be of the character of bonds known as

serials, and shall be payable in lawful money of the United States. The Supervisors shall decide at the times of the issue of the bonds in what lawful money of the United States said bonds shall be payable. Not less than one-fortieth part of the whole amount of indebtedness shall be paid each and every year, on a day and at a place to be fixed by the Supervisors, together with the interest on all sums unpaid at such date.

The bonds so issued shall be exempt from all taxation for municipal purposes, and shall be issued in denominations of not less than ten dollars nor greater than one thousand dollars, and preference in the sale and allotment thereof shall be given to subscribers for the smallest amounts and lowest denominations.

Said bonds must be payable on the day and at the place fixed therein, and with interest at the rate specified therein, but such interest shall not exceed four per centum per annum, payable annually, semi-annually or quarterly, as the Supervisors may determine. Such bonds, when issued, may be sold by the Supervisors from time to time as required, and in such quantities as they may determine, but the same must be sold for cash in lawful money of the United States as aforesaid to the highest bidder at not less than par, after having been advertised in the official newspaper. They shall be sold under sealed proposals, and the Supervisors shall have the right to reject any or all bids made for the purchase thereof. The proceeds of such sales shall be placed in the treasury to the credit of the proper fund and shall be applied exclusively to the purposes and objects mentioned in the ordinance authorizing their issue until such objects are fully accomplished, after which, if any

surplus remains, such surplus shall be transferred to the General Fund.

Bonds, how payable: *Murphy v. San Luis Obispo*, 119 Cal. 624.

As to refunding of city indebtedness, see Political Code, secs. 4445-4449.

SEC. 12. Such bonds shall be signed by the Mayor and the Treasurer, and shall be countersigned by the Auditor. The coupons shall be numbered consecutively and signed by the Treasurer, and the bonds and coupons shall be payable at the office of the Treasurer.

SEC. 13. At the time of levying the municipal tax and in the manner provided for such tax levy, the Supervisors shall levy and collect annually a tax sufficient to pay the annual interest on such bonds, and also the proper aliquot part of the aggregate amount of such indebtedness so incurred. Such taxes shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the same time and in the same manner as other municipal taxes are collected.

SEC. 14. A neglect or refusal on the part of the Supervisors to comply with the provisions of this article shall constitute cause for the removal from office of any member or members of the board guilty of such neglect or refusal.

Removal from office.—Act of March 30, 1874, (Stats. 1873-4, 911); Penal Code, secs. 758-772; *Fitch v. Board of Supervisors*, XVI Cal. Dec. 129.

ARTICLE XIII.
CIVIL SERVICE.

SECTION 1. Immediately upon the taking effect of this charter the Mayor shall appoint three persons, known by him to be devoted to the principles of civil service reform, who shall constitute the Civil Service Commission, one for one year, one for two years, and one for three years. Each year thereafter the Mayor shall in like manner appoint one person as the successor of the commissioner whose term of office expires in that year, to serve as such commissioner for three years. All appointments shall be so made that not more than one commissioner shall at any time belong to the same political party. Each of such commissioners shall receive an annual salary of twelve hundred dollars.

Civil service reform.—Consult the following works: "Office-Seekers and the President's Manifesto" (Louis Windmüller), *Forum*, 15:478; "Are Presidential Appointments for Sale?" (William Dudley Foulke), *Forum*, 16:399; "A Decade of the Merit System" (John T. Doyle), *Forum*, 14:216; "A Review of Two Administrations" (Lucius B. Swift), *Forum*, 14:201; "George William Curtis and Civil Service Reform" (Sherman S. Rogers), *Atlantic Monthly*, 71:15; "The Present Status of Civil Service Reform" (Theodore Roosevelt), *Atlantic Monthly*, 75:239; "Ten Years of Civil Service Reform" (Charles Lyman), *North Am. Rev.*, 157:571; "Civil Service Principles in the Department of State," *Nation*, 62:357; "Six Years of Civil Service Reform" (Theodore Roosevelt), *Scribners*, 18:238.

Effect of civil service provisions.—The effect of the provisions of this chapter is that the principal officers of the

municipality shall make the appointment of their deputies, subordinates, and assistants from classified lists of persons whose qualifications have been determined by the civil service commission upon competitive examination, and from a certified list of not more than three names of the highest on such classified list, who are qualified to fill the office to be filled; and, furthermore, that when appointed to such office no one shall be removed except for cause.

SEC. 2. The commissioners shall classify all the places of employment in or under the offices and departments of the city and county mentioned in section eleven of this article, with reference to the examinations hereinafter provided for. The places so classified by the commissioners shall constitute the classified civil service of the city and county, and no appointment to any such place shall be made except according to the rules hereinafter mentioned.

SEC. 3. The commissioners shall make rules to carry out the purposes of this article, and for examinations, appointments, promotions and removals, and in accordance with its provisions may from time to time, make changes in the existing rules. All rules and all changes therein shall be forthwith printed for distribution by the commissioners.

SEC. 4. All applicants for places in the classified civil service shall be subjected to examination, which shall be public, competitive and free. Such examinations shall be practical in their character, and shall relate to those matters only which will fairly test the relative capacity of the persons examined to discharge the duties of the positions to which they seek to be ap-

pointed, and shall include, when appropriate, tests of physical qualifications, health, and of manual or professional skill.

As to qualifications of deputies, see secs. 2 and 15, art. XVI, of this charter.

SEC. 5. The selection of laborers shall be governed by priority of application only. No question in any examination shall relate to political or religious opinions or affiliations. The commissioners shall control all examinations, and may, whenever an examination is to take place, designate a suitable number of persons, either in or not in the official service of the city and county, to be examiners; and, if in the official service, it shall be a part of their official duty, without extra compensation, to conduct such examinations as the commissioners may direct, and to make return and report thereof to the commissioners. The commissioners may substitute any other person, whether in or not in such service, in the place of any one so selected, or may themselves act as such examiners.

SEC. 6. Notice of the time, place and general scope of every examination shall be given by the commissioners by publication for two weeks preceding such examination in the official newspaper, and such notice shall also be posted by the commissioners in a conspicuous place in their office for two weeks before such examination. Such further notice of examination shall be given as they may prescribe.

SEC. 7. From the returns of the examiners, or from the examinations made by the commissioners, the com-

missioners shall prepare a register for each grade or class of positions in the classified service of the city and county of the persons whose general average standing upon examination for such grade or class is not less than the minimum fixed by the rules of the commissioners, and who are otherwise eligible. Such persons shall take rank upon the register as candidates in the order of their relative excellence, as determined by examination, without reference to priority of time of examination.

SEC. 8. The commissioners shall provide for promotion in the classified service on the basis of ascertained merit and seniority in service and standing upon examination, and shall provide, in all cases where practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among such members of the next lower rank established by the commissioners for each department as desire to submit themselves to such examinations. The commissioners shall submit to the appointing power the names of not more than three applicants having the highest rating for each promotion. The method of examining, and the rules governing the same, and the method of certifying, shall be the same, as near as may be, as provided for applicants for original appointments.

SEC. 9. The head of the department or office, in which a position classified under this article is to be filled, shall notify the commissioners of that fact, and the commissioners shall then certify to the appointing officer the name and address of one or more candidates, not exceeding three, standing highest upon the register for the class or grade to which the position belongs; but labor-

ers shall be taken according to their priority of application. In making such certification, sex shall be disregarded, except when some statute, the rules of the commissioners, or the appointing power specifies sex.

SEC. 10. The appointing officer shall notify the commissioners of each position to be filled separately, and shall fill such place by the appointment of one of the persons certified to him by the commissioners therefor. Such appointment shall be on probation for a period to be fixed by the rules of the commissioners; but such rules shall not fix such period at exceeding six months. The commissioners may strike off names of candidates from the register after they have remained thereon more than two years. At or before the expiration of the period of probation, the head of the department or office in which a candidate is employed, may, by and with the consent of the commissioners, discharge him upon assigning in writing his reason therefor to the commissioners. If he is not then discharged, his appointment shall be deemed complete. To prevent the stoppage of public business, or to meet extraordinary exigencies, the head of any department or office may, with the approval of the commissioners, make temporary appointments, to remain in force not exceeding sixty days, and only until regular appointments, under the provisions of this article, can be made.

SEC. 11. The provisions of this article shall apply to the following offices and departments of the city and county: the County Clerk, the Assessor, the Tax Collector, the Sheriff, the Auditor, the Recorder, the Coroner, the clerks and stenographers of the Justices' and

Police Courts, the Board of Public Works, the Police Department, the Fire Department, the Board of Election Commissioners, the Board of Health and all boards or departments controlling public utilities; but the following deputies, clerks and employees in said offices and departments shall be exempted therefrom: the cashier of the County Clerk, the chief deputy and the cashier of the Assessor, the chief deputy and the cashier of the Tax Collector, the under-sheriff and the chief bookkeeper of the Sheriff, the deputy auditor, the chief deputy of the Recorder, the chief deputy coroner, the City Engineer, the secretary and the architect of the Board of Public Works, the registrar of the Board of Election Commissioners, the Chief of Police, the Chief Engineer of the Fire Department, and all physicians appointed by or on the Board of Health. All officers, courts, boards and heads of departments vested in this charter with the power to appoint deputies, clerks, stenographers or employees in any of the offices or departments of the city and county mentioned in this section shall make such appointments in conformity with the rules and provisions prescribed by this article, and any appointment not so made shall be void.

SEC. 12. No deputy, clerk or employee in the classified civil service of the city and county, who shall have been appointed under said rules, shall be removed or discharged except for cause, upon written charges and after an opportunity to be heard in his own defense. Such charges shall be investigated by or before the Civil Service Commission, or by or before some officer or board appointed by the commissioners to conduct such

investigation. The finding and decision of the commissioners, or such investigating officer, or board, when approved by the commissioners, shall be certified to the appointing officer or board, and shall be forthwith enforced by such officer. Nothing in this article shall limit the power of any officer or board to suspend a subordinate for a reasonable period, not exceeding thirty days.

Validity of civil service provisions.—The validity of the provisions of this chapter is attacked as being in conflict with section 16 of article XX of the Constitution, which reads as follows:

“When the term of any officer or commissioner is not provided for in this Constitution, the term of such officer or commissioner may be declared by law; and if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.”

From this provision, the following are the *only* classes of officers, in reference to their terms, which are permitted by the Constitution: (1) officers whose terms are established by the Constitution; (2) officers whose terms are declared by law; and (3) officers holding during the pleasure of the power making the appointment. Unless the term of an officer is within one of these categories, the term is void.

It is submitted that a provision that officers shall hold during good behavior (which is the substance of the charter provision) does not come within any of these classes of terms. That it does not come within the first, needs no argument. As to the second class, even admitting that “good behavior” is a “term” within the meaning of the Constitution (which is doubtful), the provision would still be in conflict with the last clause of the section, viz.: “in no case shall such term exceed four years.” That the provision does not come within the third class is evident, as the very purpose of civil service reform is that the subordinate shall not hold at the pleasure of the appointing power, but during good behavior.

This conclusion is supported by the following cases, which lay down the rule that, unless the term of the officer is fixed by the Constitution or declared by law, the officer holds during the pleasure of the authority making the appointment: *People v. Hill*, 7 Cal. 97; *People v. Perry*, 79 Cal. 105; *Smith v. Brown*, 59 Cal. 672; *People v. Shear*, 15 Pac. Rep. 92.

It follows, therefore, that the civil service provisions of the charter, so far as they fix the term of office of deputies, etc., are invalid, if the persons whom it governs are "officers" within the meaning of section 16 of article XX of the Constitution. That most of the persons mentioned by section 11 of this chapter are officers within the meaning of this provision of the Constitution, seems to be conclusively settled by the following cases: *Vaughn v. English*, 8 Cal. 39; *People v. Middleton*, 28 Cal. 603; *People v. Perry*, 79 Cal. 105; *Crawford v. Dunbar*, 52 Cal. 36; *Farrell v. Sacramento*, 85 Cal. 408; *State v. Brandt*, 41 Iowa, 593; *Somers v. State*, 5 S. Dak. 584; *U. S. v. Hartwell*, 6 Wall. (U. S.) 385; note 72 Am. Dec. pp. 179-189; *Wright v. Lauge-nour*, 55 Cal. 280; *Phelps v. Winchomb*, 3 Bulst. 77.

It, therefore, follows that the provision that they shall not be removed except for cause is void. This, however, does not invalidate the manner of appointment, unless this provision is held to be so connected with the other provisions of the chapter that the one cannot stand without the other. As non-removability, except for cause, is the very backbone of civil service reform, there is much weight in the argument that the effect of the illegality of the provision concerning the tenure of office invalidates the entire provision as to the manner of the appointment.

SEC. 13. Immediate notice in writing shall be given by the appointing power to the commissioners of all appointments, permanent or temporary, made in such classified civil service, and of all transfers, promotions, resignations, suspensions or vacancies from any cause in such service, and of the date thereof; and a record of the same shall be kept by the commissioners. When any

place of employment is created or abolished, or the compensation attached thereto altered, the officer or board making such change shall immediately report in writing to the commissioners.

SEC. 14. The commissioners shall investigate the enforcement of the provisions of this article, and of its rules, and the action of the examiners herein provided for, and the conduct and action of the appointees in the classified service in the city and county, and may inquire as to the nature, tenure and compensation of all places in the public service thereof.

SEC. 15. The commissioners shall, on or before the fifteenth day of January in each year, make to the Supervisors a report showing their acts, the rules in force, the practical effects thereof, and suggestions for the more effectual accomplishment of the purposes of this article. The Mayor may require a report from the commissioners at any time.

SEC. 16. The commissioners shall employ a chief examiner who shall, under their direction, superintend any examination held in the city and county under this article, and who shall perform such other duties as the Commissioners may prescribe. The chief examiner shall be secretary of the commission by virtue of his office. He shall keep minutes of its proceedings, preserve all reports made to it, and keep a record of all examinations held under its direction. He shall receive an annual salary of twenty-four hundred dollars.

SEC. 17. The Supervisors shall furnish the Commission with suitable offices, office furniture, books, station-

ery, blanks, heat and light, and shall provide for the payment of such other expenses as may be necessarily incurred in carrying out the provisions of this article.

SEC. 18. No person or officer shall by himself, or in co-operation with other persons, defeat, deceive or obstruct any person in respect to his or her right of examination; or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined hereunder, or aid in so doing; or make any false representations concerning the same, or concerning the person examined; or furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person of being appointed, employed or promoted.

SEC. 19. The commissioners shall certify to the Auditor all appointments to places of employment in the classified civil service, and all vacancies occurring therein, whether by dismissal, resignation or death, and all findings made or approved by the Commission under the provisions of section twelve of this article.

SEC. 20. The commissioners shall have power to institute and prosecute legal proceedings for violations of any of the provisions of this article.

ARTICLE XIV.

PARK COMMISSIONERS.

SECTION 1. The lands designated upon the map of the outside lands of the city and county, made pursuant to order number one hundred, by the word "Park," extending from Stanyan Street to the Pacific Ocean and known as Golden Gate Park; also the land fronting on Haight Street, designated upon said map by the word "Park," and known as "Buena Vista Park"; also the lands designated upon said map by the word "Avenue," extending from Baker Street westward until it crosses Stanyan Street; also that certain highway bounded on the west by the Pacific Ocean, and designated upon said map as "Great Highway"; also "Mountain Lake Park"; also "Seal Rocks," as ceded to the city and county of San Francisco by act of Congress; and all the other parks and squares in the city and county, and all the grounds surrounding public buildings in the city and county, and all parks and squares and public pleasure grounds hereafter acquired by the city and county shall be under the exclusive control and management of a board of commissioners, who shall be known and designated as Park Commissioners.

Public parks.—As to public parks in general, consult the following acts: Act of March 8, 1887, (Stats. 1887, 52); Act of March 19, 1889, (Stats. 1889, 361); Act of March 14, 1889, (Stats. 1889, 143); Act of March 9, 1885, (Stats. 1885, 38); Act of March 1, 1897, (Stats. 1897, 47). See also: *Archer v. Salinas City*, 93 Cal. 43; *Sawyer v. San Francisco*, 50 Cal. 370; *Hoadley v. San Francisco*, 70 Cal. 320; *People v. Park & O.*

R. R. Co., 76 Cal. 156; *Cohn v. Pareels*, 72 Cal. 367; *San Francisco v. Itsell*, 80 Cal. 57.

“Golden Gate Park”: Act of April 4, 1870, (Stats. 1869-70, 802); Act of April 3, 1876, (Stats. 1875-6, 861). The title to Golden Gate Park is in the City and County of San Francisco in trust for the use of the public. *People v. Park & O. R. R. Co.*, 76 Cal. 156.

“Buena Vista Park”: Act of April 4, 1870, (Stats. 1869-70, 802).

“Avenue”: Act of April 4, 1870, (Stats. 1869-70, 802).

“Mountain Lake Park”: Act of March 11, 1874, (Stats. 1873-4, 333).

“Great Highway”: Act of March 11, 1874, (Stats. 1873-4, 333).

Park Commissioners to have control of parks: Act of April 4, 1870, (Stats. 1869-70, 802).

SEC. 2. The Commissioners shall be successors in office of the Park Commissioners holding office in the city and county at the time this charter shall go into effect by virtue of appointment under any statute of this state.

SEC. 3. The Commissioners shall be five in number, one of whom must be an artist. They shall be appointed by the Mayor for a term of four years and shall receive no compensation for their services. They shall so classify themselves by lot that one of them shall go out of office at the end of one year, one at the end of two years, one at the end of three years, and two at the end of four years.

SEC. 4. The Commissioners shall organize by electing one of their number president, and they may elect a secretary who is not a member of the board. The board

shall establish rules and regulations for its government and for the performance of its duties, and for the conduct of its officers and employees, and shall require adequate bonds from all of them, except laborers, for the faithful performance of their duties in such sums as may be fixed by it. Such bonds shall be approved by the Mayor and filed in the office of the Auditor. The person elected president shall hold his office for one year, or until his successor is elected. The board must hold regular meetings at least once in two weeks, and as many special meetings as it may deem proper.

Three of the Commissioners shall constitute a quorum for the transaction of business. No contract shall be entered into authorizing the expenditure of money without the approval of four of the Commissioners. Every contract exceeding five hundred dollars in amount shall be open to public competition, unless the board shall determine in any given case to have the work done by day's labor. All the provisions of the article in this charter on the Department of Public Works relating to contracts shall be applicable to all contract work ordered by the Commissioners.

SEC. 5. The Commissioners may adopt ordinances for the regulation, use and government of the aforesaid parks, squares, avenues and grounds not inconsistent with the laws of the State of California or with this charter. Such ordinances shall, within five days after their passage, be published for ten days, Sundays excepted, in the official newspaper. Any person violating any of such ordinances shall be deemed guilty of a misdemeanor, and shall be punished therefor, on conviction, in any court of competent jurisdiction. None of such

ordinances shall be valid unless it receives the vote of four members of the board. No ordinance shall be passed at the same meeting at which it is introduced, or at any other than a regular meeting. Such ordinances shall take effect in not less than ten days after their adoption.

SEC. 6. The Commissioners shall have the complete and exclusive control, management and direction of the aforesaid parks, squares, avenues and grounds, and the exclusive right to erect, and to superintend the erection of, buildings and structures thereon; and to that end may employ and appoint superintendents, laborers, surveyors, engineers, and other officers and assistants, and prescribe and fix their duties, authority and compensation. They shall have the exclusive management and disbursement of all funds legally appropriated or received from any source for the support of said parks, squares, avenues and grounds.

The board may accept from donors suitable articles for the museum and art gallery situate in the aforesaid Golden Gate Park and shall manage and control said museum and art gallery.

Except as provided in section nine of this chapter, nothing in this section shall be so construed as to authorize the Commissioners to lease any part of any of said parks, squares, avenues and grounds to any person, company or corporation for any purpose; or to permit any person, company or corporation to build or maintain any structure on any part of said parks, squares, avenues or grounds; but this shall not inhibit the board from leasing, for a period not greater than one year,

such buildings as may be constructed by itself for the use of the public to such person, company or corporation who shall undertake to serve such use; and in every such lease the board shall reserve the right to enter at all times into and upon the premises so leased, and shall make the condition that the building so leased shall be used for park-pleasure purposes only. No such building shall be constructed by the board except it be within the objects and purposes for which said parks, squares, avenues and grounds were dedicated to the public.

Nothing, however, in this section contained shall inhibit the board from permitting the use of a limited portion of any one of the aforesaid parks or squares for the purpose of conducting thereon a fair or exposition, under such conditions and restrictions as may be necessary to conserve the integrity of said parks and squares, and for a period not greater than six months, and so as not to interfere with the use of any of the same by the public for park-pleasure purposes; but no such permission shall ever be granted except such fair or exposition be of national, state or municipal importance. None of the moneys in, or apportioned to, the Park Fund shall be used for the purposes of any such fair or exposition.

Right to lease: *People v. Park & O. R. R. Co.*, 76 Cal. 156.

SEC. 7. The Chief of Police shall, on the request of the Commissioners, detail such members of the police force of the city and county for service in said parks, squares, avenues and grounds as may be necessary for the enforcement of the law and for the proper observance of the ordinances of the Commissioners; and the Commissioners may provide a place of detention within

either of said public places in which the persons arrested for violating any of the ordinances of the board may be detained temporarily.

Sec. 5 of this chapter.

SEC. 8. The board may receive donations from persons and corporations and legacies and bequests for the improvement of said parks, squares, avenues and grounds. All moneys that may be derived from such donations, legacies and bequests, shall, unless otherwise provided by the terms of such gift, legacy, or bequest, be deposited in the treasury of the city and county to the credit of the Park Fund. The same may be withdrawn therefrom and paid out in the same manner as is provided for the payment of moneys legally appropriated for the support and improvement of such parks, squares, avenues and grounds. If the moneys derived from such gifts, bequests or legacies, shall at any time exceed in amount the sum necessary for immediate expenditures on said parks, squares, avenues and grounds, the board shall invest all or a part of the same in interest-bearing bonds of the United States, or of the State of California or of any municipality thereof.

Act of March 9, 1885, (Stats. 1885, 38).

SEC. 9. The board may lease to the State of California, on such terms as it may deem proper, a plot of ground in Golden Gate Park not more than seven hundred feet square, on which said state may erect and maintain an exposition building, in which may be exhibited the products of the several counties of the state and in which the collection made by the State Mining

Bureau may be maintained and exhibited;• but said lease shall be upon the express condition that no fee shall ever be charged for admission to said building.

Sec. 6 of this chapter.

SEC. 10. Hereafter no work of art shall become the property of the city and county by purchase, gift or otherwise, unless such work of art or design of the same, together with a statement of the proposed location of such work of art, shall first have been submitted to and approved by the Commissioners; nor shall such work of art, until so approved, be erected or placed in or upon, or allowed to extend over or upon, any street, avenue, square, park, municipal building or other public place belonging to the city and county. The board may require a complete model of the proposed work of art to be submitted. The term "work of art" as used in this section shall apply to and include all paintings, mural decorations, stained glass, statues, bas-reliefs or other sculptures, monuments, fountains, arches or other structures of a permanent character, intended for ornament or commemoration. No existing work of art in the possession of the city and county shall be removed, relocated or altered in any way without the similar approval of the board. When so requested by the Mayor, or the Supervisors, or the Board of Public Works, or the Board of Education, the Board of Park Commissioners shall act in a similar capacity, with similar powers, in respect of the designs of municipal buildings, bridges, approaches, gates, fences, lamps or other structures erected or to be erected upon land belonging to the city and county, and in respect of the lines, grades and plot-

ting of public ways and grounds, and in respect of arches, bridges, structures and approaches which are the property of any corporation or private individual and which shall extend over or upon any street, avenue, highway, park or public place belonging to the city and county. This section shall not be so construed as to impair the power of the Park Commissioners to refuse their consent to the erection or acceptance of public monuments or memorials or other works of art of any sort within any park, square or public place in the city and county.

SEC. 11. The Supervisors shall provide all necessary money for the maintenance, preservation and improvement of said parks, squares, avenues and grounds, and to that end shall annually levy a tax on all property in the city and county not exempt from taxation, which shall not be less than five cents nor more than seven cents upon each one hundred dollars assessed valuation of said property.

Taxes for parks.—Act of April 4, 1870, (Stats. 1869-70, 802), sec. 11; Act of March 11, 1874, (Stats. 1873-4, 333), sec. 8; Act of April 3, 1876, (Stats. 1875-6, 861).

ARTICLE XV.
BONDS OF OFFICIALS.

SECTION 1. Officers of the city and county, before entering upon the discharge of their official duties, shall respectively give and execute to the city and county such official bonds as may be required by law, ordinance, or this charter. When the amount of any bond is not fixed by law or by this charter, it shall be fixed by an ordinance of the Supervisors. All bonds, excepting those of the Mayor and Auditor, must be approved by the Mayor and Auditor; the bond of the Mayor must be approved by the Auditor, and the bond of the Auditor must be approved by the Mayor. The approval of every official bond must be indorsed thereon, and signed by the officers approving the same, after examination of the sureties, as hereinafter provided. Upon the approval of a bond it must be recorded, at the expense of the party giving the bond, in the office of the Recorder, in a book kept for that purpose, entitled Record of Official Bonds. The bond of the Auditor shall be filed and kept in the office of the County Clerk. The bonds of all other officers shall be filed and kept in the office of the Auditor.

Bonds of officers.—Political Code, secs. 947-987.

As to the filing of bonds, see Political Code, sec. 950. The charter is a "statute" within the meaning of this provision of the code. *Frick v. Los Angeles*, 115 Cal. 512.

As to the time of filing the bond, see: *People v. Scannell*, 7 Cal. 432; *Doane v. Scannell*, 7 Cal. 393.

As to the delivery of the bond, see: *People v. Van Ness*, 79 Cal. 84; *Sacramento v. Bird*, 31 Cal. 66; *People v. Kneeland*, 31 Cal. 288; *Tidball v. Halley*, 48 Cal. 610.

As to the approval of the bond, see: *People v. Kneeland*, 31 Cal. 288; *People v. Evans*, 29 Cal. 429; *People v. Breyfogle*, 17 Cal. 504; *Mendocino v. Morris*, 32 Cal. 145; *People v. Scannell*, 7 Cal. 432; *Miller v. Sacramento*, 25 Cal. 93; *People v. Supervisors*, 10 Cal. 344; *People v. Huson*, 78 Cal. 154; *People v. Edwards*, 9 Cal. 286.

SEC. 2. The following officers shall respectively execute official bonds to the city and county, with sureties, in the following sums:

Mayor, twenty-five thousand dollars; Auditor, fifty thousand dollars; Treasurer, one hundred thousand dollars; Tax Collector, one hundred thousand dollars; Assessor, fifty thousand dollars; County Clerk, fifty thousand dollars; Recorder, ten thousand dollars; Sheriff, fifty thousand dollars; Coroner, ten thousand dollars; City Attorney, ten thousand dollars; District Attorney, ten thousand dollars; Public Administrator, fifty thousand dollars; Superintendent of Public Schools, five thousand dollars; each Commissioner of Public Works, twenty-five thousand dollars; Clerk of the Supervisors, ten thousand dollars; each Supervisor, five thousand dollars; each School Director, five thousand dollars; each Fire Commissioner, ten thousand dollars; each Police Commissioner, five thousand dollars; each Election Commissioner, ten thousand dollars; Property Clerk of Police Department, ten thousand dollars; the Warrant and Bond Clerk, ten thousand dollars.

As to the authority of the charter to provide for the amount of bonds of county officers, see sec. 8½ of article XI of the Constitution.

SEC. 3. City and county officers shall not be accepted as surety for each other on official bonds. Every bond shall contain a condition that the principal will faithfully perform all official duties then, or that may thereafter be, imposed upon or required of him by law, ordinance, or this charter, and that at the expiration of his term of office he will surrender to his successor all property, books, papers, and documents that may come into his possession as such officer. Such bond must also be executed by two or more sureties who shall each justify in the amount required for said bond; but when the amount of the bond is more than five thousand dollars, the sureties may become severally liable for portions of not less than twenty-five hundred dollars. When there are more than two sureties, such sureties may justify in an amount which in the aggregate shall equal double the amount of said bond.

Form of bond: *Tevis v. Randall*, 6 Cal. 632; *People v. Love*, 25 Cal. 520; *People v. Breyfogle*, 17 Cal. 504.

As to the condition of the bond, see: Political Code, sec. 954; sec. 6 of this chapter.

As to the amount of the bond, see Political Code, sec. 956.

City and county officers must not become sureties: Political Code, sec. 955, subdiv. 3.

SEC. 4. Every surety upon an official bond, other than lawfully authorized surety companies, must make an affidavit, which shall be endorsed upon such bond, that he is a resident and freeholder in the city and county, and worth in property situated in the city and county, exclusive of incumbrances thereon, double the amount of his undertaking over and above all sums for which he is already liable or in any manner bound,

whether as principal, indorser or surety, and whether such prior obligation or liability be conditional or absolute, liquidated, or unliquidated, due or to become due. All persons offered as sureties on official bonds may be examined on oath as to their qualifications by the officers whose duty it is to approve the bond.

Justification: Political Code, sec. 955; *People v. Smyth*, 28 Cal. 21.

Surety company: Act of March 12, 1885, (Stats. 1885, 114); Political Code, sec. 955; Code of Civil Procedure, secs. 1056-1057.

SEC. 5. When under any of the provisions of this charter, or of any ordinance, an official bond shall be required from an officer, the Supervisors may, by resolution, require an additional bond, whenever, in the opinion of such board, such bond or any surety thereto becomes insufficient; and such additional bond shall also be required when a surety to a bond shall die or cease to be a resident of the city and county.

Additional bond: Political Code, secs. 964-967. This does not leave the matter to the arbitrary discretion of the board. *People v. Supervisors*, 10 Cal. 344.

Form of order: *People v. Supervisors*, 10 Cal. 344.

As to the time to file new bond, see: *People v. Scannell*, 7 Cal. 432; *Doane v. Scannell*, 7 Cal. 393.

SEC. 6. Every officer shall be liable on his official bond for the acts and omissions of his deputies, assistants, clerks, and employees, appointed by him, and of any and each of them, and every official bond shall contain such a condition.

Sec. 3 of this chapter.

SEC. 7. Every board, department or officer may require of their deputies, clerks or employees bonds of indemnity with sufficient sureties for the faithful performance of their duties.

Bonds of Deputies: Political Code, sec. 985. Such a bond is an official bond. *Hubert v. Mendheim*, 64 Cal. 213. But see *San Francisco v. McAllister*, 76 Cal. 246.

ARTICLE XVI.

MISCELLANEOUS.

SECTION 1. The words "city and county" wherever they occur in this charter mean the City and County of San Francisco; and every department, board and officer, wherever either one of them is mentioned in this charter, means a department, board or officer, as the case may be, of the City and County of San Francisco.

SEC. 2. All deputies, clerks, assistants and other employees of the city and county must be citizens of the United States, and must, during their respective terms of office or employment, actually reside in the city and county and must have so resided for one year next preceding their appointment.

SEC. 3. No officer of the city and county, except members of the Police Department acting under orders of the Chief thereof, shall absent himself from the State; but he may, once only during his term of office, so absent himself for a period of not more than sixty days upon the written permission of the Mayor so to do. Violation of this section shall be sufficient cause for the removal of any officer violating the same.

Basis of section: Political Code, sec. 853. See also *People v. Shorb* (called *People v. Fleming* in the reports), 100 Cal. 537.

SEC. 4. Any person holding a salaried office under the city and county, whether by election or appointment,

who shall, during his term of office, hold or retain any other salaried office under the government of the United States, or of this state, or who shall hold any other salaried office connected with the government of the city and county, or who shall become a member of the Legislature, shall be deemed to have thereby vacated the office held by him under the city and county.

SEC. 5. No department, board or officer shall, under any circumstances, employ more subordinates than are specifically provided for in this charter or buy supplies beyond the sum furnished therefor by the Supervisors.

SEC. 6. No Supervisor and no officer or employee of the city and county, shall be or become, directly or indirectly, interested in, or in the performance of, any contract, work, or business, or in the sale of any article, the expense, price or consideration of which is payable from the treasury; or in the purchase or lease of any real estate or other property belonging to, or taken by, the city and county, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of the city and county. If any person in this section designated shall, during the time for which he was elected or appointed, acquire an interest in any contract with, or work done for, the city and county, or any department or officer thereof, or in any franchise, right or privilege granted by the city and county, unless the same shall be devolved upon him by law, he shall forfeit his office, and be forever after debarred and disqualified from being elected, appointed or employed in the service of the city and county; and all such contracts shall be void, and shall not be enforceable against the city and county.

Contracts. —Political Code, secs. 4071, 920; Penal Code, sec. 71; Cal. Con., art. XI, sec. 17; Charter, art. II, ch. III, sec. 1; Dillon on Mun. Corp., sec. 444; *Doiningos v. Supervisors*, 51 Cal. 608; *Andrews v. Pratt*, 44 Cal. 309; *Wilbur v. Lynde*, 49 Cal. 290; *Shakespear v. Smith*, 77 Cal. 638; *McConoughey v. Jackson*, 101 Cal. 265; *Rice v. Haywards*, 107 Cal. 398; *Croly v. Sacramento*, 119 Cal. 229.

In the latter case the question as to the validity of the provision for a perpetual disqualification from holding any other office was raised, but not decided.

The matter of removal of municipal officers is a municipal affair. *Croly v. Sacramento*, 119 Cal. 229; Intro., p. 19.

The fact that the mayor, before his election had become the assignee of a contract for the improvement of a street, as security for a debt due him by the contractor, does not affect the validity of the contract or the assessment for the work, nor incapacitate him from countersigning the warrant for the collection of the assessment. *Beaudry v. Valdez*, 32 Cal. 269.

SEC. 7. No officer or employee of the city and county shall give or promise to give to any other person, any portion of his compensation, or any money, or valuable thing, in consideration of having been, or of being, nominated, appointed, voted for, or elected to, any office or employment; and if any such promise or gift be made, the person making such gift or promise shall forfeit his office and employment, and be forever debarred and disqualified from being elected, appointed or employed in the service of the city and county.

See act to promote purity of elections: Act of Feb. 23, 1893, (Stats. 1893, 12); Act of March 14, 1878, (Stats. 1877-8, 236).

SEC. 8. Any officer of the city and county who shall, while in office, accept any donation or gratuity in money, or other valuable thing, either directly or indirectly,

from any subordinate or employee, or from any candidate or applicant for any position as employee or subordinate under him, shall forfeit his office, and be forever debarred and disqualified from holding any position in the service of the city and county.

SEC. 9. Every department, board and commission provided for in this charter, except the Supervisors, shall render to the Mayor within one month after the end of each fiscal year a full report of all the operations of such department or board or commission for such year.

SEC. 10. An office becomes vacant when the incumbent thereof dies, resigns, is adjudged insane, convicted of felony, or of an offense involving a violation of his official duties, or is removed from office, or ceases to be a resident of the city and county, or neglects to qualify within the time prescribed by law, or within twenty days after his election or appointment, or shall have been absent from the state without leave for more than sixty consecutive days.

Absence from state: sec. 3 of this chapter.

Vacancy in general: Political Code, sec. 996.

SEC. 11. Every officer who shall approve, allow or pay any demand on the treasury not authorized by law, ordinance or this charter, shall be liable to the city and county individually and on his official bond for the amount of the demand so illegally approved, allowed or paid.

SEC. 12. The departments, boards, commissioners and officers provided for in this charter shall be entitled

to the possession of all papers, books, documents, maps, plats, records and archives in the possession or under the control of those respectively who are superseded in office under this charter by such departments, boards, commissioners and officers.

SEC. 13. All books and records of every office and department shall be open to the inspection of any citizen at any time during business hours. Certified copies or extracts from said books and records shall be given by the officer having the same in custody to any person demanding the same, and paying or tendering ten cents a folio of one hundred words for such copies or extracts; but the records of the Police Department shall not be subject to such inspection except permission be given by the Police Commissioners or by the Chief of Police.

SEC. 14. The Treasurer shall keep his office open for business every day, except legal holidays, from nine o'clock in the forenoon until four o'clock in the afternoon. Except where otherwise provided for by law, or by this charter, all other public offices shall be kept open for business every day, except legal holidays, from half-past eight o'clock in the forenoon until five o'clock in the afternoon; and, in addition thereto, from the first day of November until the last Monday of December in each year the office of the Tax Collector shall be kept open until nine o'clock in the evening.

SEC. 15. No person shall be eligible to hold any office, or be clerk or deputy in any office or department, who has been found guilty of malfeasance in office, bribery or other infamous crime or who in any capacity has embezzled public funds.

SEC. 16. The fiscal year mentioned in this charter shall commence on the first day of July and end on the thirtieth day of June following.

Fiscal year.—The act of March 26, 1895, (Stats. 1895, 128), provides that the legislative power of a city having a freeholders' charter may change the fiscal year to begin at any other time than that fixed by the charter. It is believed that the act is unconstitutional, as an improper attempt to amend the charter in another manner than that provided by the Constitution. See Cal. Con., sec. 8. art. XI.

SEC. 17. All moneys, assessments and taxes belonging to or collected for the use of the city and county, coming into the hands of any officer of the city and county, shall immediately be deposited with the Treasurer for the benefit of the funds to which they respectively belong. If such officer for twenty-four hours after receiving the same shall delay or neglect to make such deposit, he shall be deemed guilty of misconduct in office and may be removed.

SEC. 18. Any elected officer, except Supervisor, may be suspended by the Mayor and removed by the Supervisors for cause; and any appointed officer may be removed by the Mayor for cause. The Mayor shall appoint some person to discharge the duties of the office during the period of such suspension.

SEC. 19. When the Mayor shall suspend any elected officer he shall immediately notify the Supervisors of such suspension and the cause therefor. If the board is not in session he shall immediately call a session of the same in such manner as shall be provided by ordi-

nance. The Mayor shall present written charges against such suspended officer to the board and furnish a copy of the same to said officer, who shall have the right to appear with counsel before the board in his defense. If by an affirmative vote of not less than fourteen members of the Board of Supervisors, taken by ayes and noes and entered on its record, the action of the Mayor is approved, then the suspended officer shall thereby be removed from office; but if the action of the Mayor is not so approved such suspended officer shall be immediately reinstated.

SEC. 20. When the Mayor shall remove an appointed officer from office, he shall immediately notify the Board of Supervisors of such removal, and furnish it a statement of the cause therefor, which statement shall be entered in the record of its proceedings.

SEC. 21. Unless otherwise provided by law or by this charter, any officer, board or department authorized to appoint any deputy, clerk, assistant or employee, shall have the right to remove any person so appointed.

Art. XIII, sec. 12, of this charter.

SEC. 22. All appointments of officers, deputies and clerks to be made under any provision of this charter must be made in writing and in duplicate, authenticated by the person or person, board or officer making the same. One of such duplicates must be filed with the secretary of the Civil Service Commission and the other with the Auditor.

Art. XIII of this charter; Political Code, secs. 4112-4113.

SEC. 23. Wherever it is provided in this charter that the members of any board, department or commission

shall so classify themselves by lot that their terms of office shall expire at different times, such members shall, on the day of making such classification, cause the same to be entered in the records of their proceedings, and a copy thereof, certified by the secretary thereof and signed by all of said members, shall be filed with the Clerk of the Supervisors. In every case such classification must be made at the first meeting of the board.

SEC. 24. Every officer and every member of any board or committee provided for in this charter shall have the power to administer oaths and affirmations, and every such board, officer or committee shall have power to issue subpoenas, to compel by subpoena the production of books, papers and documents, and to take and hear testimony concerning any matter or thing pending before any such board, officer or committee. If any person so subpoenaed neglect or refuse to appear, or to produce any book, paper or document, as required by such subpoena, or shall refuse to testify before any such board, officer or committee, or to answer any question which any officer or a majority of such board or committee shall decide to be proper or pertinent, he shall be deemed in contempt, and any such board, officer or committee shall have power to take the proceedings in that behalf provided by the general laws of this state. The Chief of Police must, on request of such officer or of any member of any such board or committee, detail a police officer or officers to serve such subpoenas.

Contempts.—Code of Civil Procedure, secs. 1209-1222.

Witnesses: Code of Civil Procedure, sec. 128, subdiv. 6; secs. 1991-1994; Penal Code, sec. 1331.

Supervisors may punish for contempt: Political Code, sec. 4047.

Officers authorized to take proof of instruments may punish for contempt: Civil Code, sec. 1201.

It is not plain whether or not this section gives such officers and boards power to punish for contempt. As to the power of the court to punish for contempt in such a case, see *Lezinsky v. Superior Court*, 72 Cal. 510.

Whether or not the Legislature may confer power to punish for contempt on other than judicial officers, has been questioned. See Am. & Eng. Ency. of Law, vol. 6, p. 1058.

SEC. 25. All publications provided for in this charter must be made in the official newspaper only.

SEC. 26. All franchises and privileges heretofore granted by the city and county which are not in actual use or enjoyment, or which the grantees thereof have not in good faith commenced to exercise, are hereby declared forfeited and of no validity unless said grantees or their assigns shall, within six months after this charter takes effect, in good faith commence the exercise and enjoyment of such privilege or franchise.

Civil Code, sec. 502.

SEC. 27. All ordinances or resolutions for the improvement of any street for which no contract shall have been entered into at the time this charter takes effect are hereby repealed.

SEC. 28. All ordinances, orders and resolutions of the supervisors of the city and county in force at the time this charter takes effect, and not inconsistent therewith, shall continue in force until amended or repealed.

SEC. 29. When the supervisors shall determine that the public interest requires the construction or acquisition of any permanent municipal building or improvement, the cost of which in addition to the other expenses of the city and county will exceed the income and revenue provided for the city and county for any one year, they must by ordinance passed by the affirmative vote of not less than fourteen members of the board, submit a proposition to incur a bonded indebtedness for such purpose to the electors of the city and county at a special election to be held for that purpose only. All the provisions of this charter providing for the acquisition of public utilities, so far as the same are applicable, shall apply to the manner of submitting such proposition to the electors, to the limitations of said bonded indebtedness, to the issuance and character of the same, and to the time when and the kind of money in which said bonded indebtedness shall be payable. The proceeds of the sales of such bonds shall be paid into the treasury to the credit of the Public Building Fund.

See: Charter, art. XII; secs. 20-21, ch. I, art. II; Cal. Con., art. XI, sec. 18.

SEC. 30. Every assistant deputy or other subordinate of any board, department or officer, shall discharge any of the duties pertaining to such department, board or office as his chief may assign him to.

Political Code, sec. 865: *Lathrop v. Brittain*, 30 Cal. 680; *People v. Otto*, 77 Cal. 45.

SEC. 31. No member of the Board of Police Commissioners and no member of the Board of Fire Commis-

sioners shall be eligible to any elective office while he is a member of such board, or for one year thereafter.

Police Commissioners: Art. VIII, chs. I and II, of this charter.

Fire Commissioners: Art. IX, ch. II, of this charter.

SEC. 32. No member of the Board of Police Commissioners and no member of the Board of Fire Commissioners, and no officer, subordinate or employee of the Police Department or of the Fire Department, shall be a member of any partisan convention the purpose of which is to nominate candidates for office; nor shall either of them directly or indirectly electioneer, by soliciting votes or otherwise, for or against any candidate for office at any election, or for or against any candidate for nomination before any political convention, or for or against any candidate for delegate to such convention at any primary election; nor shall either of them be a member of any committee, club, or organization the purpose of which is to nominate or endorse candidates for office at any election; nor in any way attempt to influence or control such committee, club or organization, while nominating or endorsing said candidates; nor take any part in the control, management or distribution of the political patronage of any public officer; nor shall any member of either of said boards, or any officer, subordinate or employee of either of said departments directly or indirectly attempt to control or in any manner influence the action of any officer, subordinate or employee of either of said departments at any general, special or primary election. And no officer, subordinate or employee of either of said departments shall levy, collect

or pay any amount of money as an assessment or contribution for political purposes. Any person violating any of the provisions of this section shall be removed forthwith from his office or employment. If the violation be by a member of either of said boards the Mayor must remove such member; and if by an officer, employee or subordinate of either of said departments, then the board whose officer, employee or subordinate has been guilty of such violation, must remove such officer, employee or subordinate; and if such board fail or refuse to make such removal, then the Mayor must remove all members of the board who have so failed or refused.

SEC. 33. No deputy, clerk or other employee of the city and county shall be paid for a greater time than that covered by his actual service.

SEC. 34. The salaries provided in this charter shall be in full compensation for all services rendered, and every officer shall pay all moneys coming into his hands as such officer, no matter from what source derived or received, into the treasury of the city and county within twenty-four hours after receipt of the same.

SEC. 35. When any officer, board or department shall require additional deputies, clerks or employees, application shall be made to the Mayor therefor, and upon such application the Mayor shall make investigation as to the necessity for such additional assistance; and if he find the same necessary he may recommend to the Supervisors to authorize the appointment of such additional deputies, clerks or employees; and thereupon the Supervisors, by an affirmative vote of not less than

fourteen members, may authorize such appointments, and provide for the compensation of such appointees, subject to the limitations contained in this charter, and subject to the provisions of article XIII thereof.

SEC. 36. At any time between the first day of December, in the year one thousand eight hundred and ninety-nine, and the first day of January, in the year nineteen hundred, the person who, at the election held under this charter in the month of November next preceding, has been elected the Mayor of the city and county, shall make all the appointments provided by this charter to be made by him, and all the persons so appointed shall thereupon qualify as in this charter provided, and shall take office at the hour of noon on the first Monday after the first day of January in the year nineteen hundred, and all boards, commissions and officers of the city and county holding by appointment under existing laws shall hold office no longer than said last aforesaid time.

Art. XI of this charter.

SEC. 37. The balance remaining in the School Fund at the time this charter takes effect shall forthwith be transferred to the Common School Fund created by this charter. The balance remaining in the Library Fund at the time this charter takes effect shall forthwith be transferred to the Library Fund created by this charter. The balance remaining in the Park Improvement Fund at the time this charter takes effect shall forthwith be transferred to the Park Fund created by this charter. The balance remaining in the Unappor-

tioned Fee Fund at the time this charter takes effect shall forthwith be transferred to the Unapportioned Fee Fund created by this charter. The balance remaining in the Police Relief and Pension Fund at the time this charter takes effect shall forthwith be transferred to the Police Relief and Pension Fund created by this charter. The balance remaining in the Surplus Fund at the time this charter takes effect shall forthwith be transferred to the Surplus Fund created by this charter. The balance remaining in the Special Deposit Fund at the time this charter takes effect shall forthwith be transferred to the Special Deposit Fund created by this charter. The balance remaining in the General Fund at the time this charter takes effect, the balance remaining in the Street Light Fund at the time this charter takes effect, the balance remaining in the Street Department Fund at the time this charter takes effect, the balance remaining in the Police Contingent Fund at the time this charter takes effect, the balance remaining in the Pound Fee Fund at the time this charter takes effect, and the balance remaining in the Special Fee Fund at the time this charter takes effect, shall each and every of them be forthwith transferred to the General Fund created by this charter. Out of the said General Fund shall be paid, as in this section hereinafter provided, all the expenses of the various departments of the city and county, except such expenses as are by this charter to be paid out of the funds specifically provided for the payment of such expenses. ¶ For the six months ending on the thirtieth day of June, in the year nineteen hundred, each and every of said departments shall expend the moneys set apart to each of them by the Board of Supervisors of the

existing municipality.} So much of said moneys set apart by said Board of Supervisors to the Superintendent of Public Streets, Highways and Squares for the fiscal year ending on said thirtieth day of June, in the year nineteen hundred, as shall remain unexpended at the time this charter takes effect, shall be expended during said six months by the Board of Public Works in the operations of the department committed to its charge. All the expenses of the city and county which are not to be paid out of specific funds shall be paid during said six months out of the General Fund. Should the moneys set apart by the Board of Supervisors of the existing municipality to any department of the city and county become or be exhausted at any time during said six months, or should any department created by this charter have no money specifically provided for it during said six months, then in each such case the expenses thereof shall be paid out of the General Fund, notwithstanding anything contained in sections six and seven of chapter I of article III of this charter. Such pensions as may accrue to firemen under article IX of this charter during said six months shall be paid out of the General Fund. The existing municipality mentioned in this section is the existing municipality of the City and County of San Francisco, and the several funds which are to be transferred as in this section provided are funds of said existing municipality. All the funds of said existing municipality not mentioned in this section, and which are authorized by law, shall be continued in the treasury until the necessity for their continuance ceases.

Art. III, ch. II, of this charter.

SEC. 38. When the necessity for maintaining any fund of the city and county in existence at the time this charter takes effect has ceased to exist, and a balance remains in such fund, the Supervisors shall so declare by ordinance, and upon such declaration such balance shall be forthwith transferred to the General Fund.

Art. III, ch. II, of this charter.

SCHEDULE.

This charter shall be published for twenty days in the San Francisco Call and in the Daily Report, daily newspapers of general circulation in the City and County of San Francisco, and after such publication, viz.: on Thursday, the twenty-sixth day of May, in the year one thousand eight hundred and ninety-eight, it shall be submitted to the qualified electors of said City and County of San Francisco, at a special election which shall be held on that day, for the sole purpose of voting upon the adoption of the same; and if a majority of the qualified electors of said city and county voting at said election shall ratify the same it shall be submitted to the Legislature of the State of California for its approval or rejection. If the Legislature shall approve the same, it shall take effect and be in force, except as hereinafter otherwise provided, on and after the hour of noon on the first Monday after the first day of January in the year nineteen hundred, and shall thereupon become the charter and organic law of the City and County of San Francisco, and shall supersede the existing charter of said city and county, and all amendments thereof, and all laws inconsistent with this charter.

The form of ballots at said election shall be as follows:

FOR THE NEW CHARTER, YES.

FOR THE NEW CHARTER, NO.

For the sole purposes of the election of the officers directed in this charter to be elected by the people, this charter shall take effect on and after its approval by the Legislature, and the election of such officers shall be managed, conducted and controlled by the Board of Election Commissioners in and for said city and county in office at the time of such election.

And for the sole other purpose of the Mayor elected under this charter making the appointments provided in

this charter to be made by him, and of the qualification of the persons so appointed, this charter shall take effect on the first day of December, in the year one thousand eight hundred and ninety-nine.

BE IT KNOWN, That the City and County of San Francisco, containing a population of more than two hundred thousand inhabitants, on the twenty-seventh day of December, in the year one thousand eight hundred and ninety-seven, and under and in accordance with the provisions of section 8, of article XI, of the Constitution of this state, did elect the undersigned a board of fifteen freeholders, to prepare and propose a charter for said city and county; and we, the members of said board, in pursuance of such provisions of the Constitution, and within a period of ninety days after such election, have prepared and do propose the foregoing, signed in duplicate, as and for the charter for said City and County of San Francisco.

IN WITNESS WHEREOF, we have hereunto set our hands in duplicate, this twenty-fifth day of March, in the year one thousand eight hundred and ninety-eight.

JOSEPH BRITTON, *President*,
JEROME A. ANDERSON,
JAMES BUTLER,
H. N. CLEMENT,
A. COMTE, JR.,
ALFRED CRIDGE,
L. R. ELLERT,
ISIDOR GUTTE,
P. H. MCCARTHY,
JOHN NIGHTINGALE, JR.,
JOHN C. NOBMANN,
JOSEPH O'CONNOR,
LIPPMANN SACHS,
EDWARD R. TAYLOR,
A. W. THOMPSON.

Attest: J. RICH'D FREUD,
Secretary.

Adoption of charter.—*1. By the freeholders.*—The charter was adopted by the board of freeholders, March 25, 1898.

In adopting a freeholders' charter, a majority of the board of freeholders may act, although some of those elected are disqualified. *People v. Hecht*, 105 Cal. 621.

The board of election commissioners may cause a board of freeholders to be elected. *People v. Hoge*, 55 Cal. 612.

2. By the electors.—The charter was approved by the electors on the 26th of May, 1898, voting at a special election called for that purpose.

The "special election" provided for in section 8 of article XI of the Constitution is an election held for the special purpose of voting upon the charter. *People v. Davie*, 114 Cal. 363.

The charter may be submitted to the electors by the board of election commissioners. *People v. Hoge*, 55 Cal. 612.

An election for the adoption of a freeholders' charter is void if held without sufficient notice. *People v. Gunn*, 85 Cal. 238.

It must be approved by a majority of the electors voting at the election, and not merely by a majority of the electors voting on the proposition. *People v. Berkeley*, 102 Cal. 298.

3. By the Legislature.—The charter was approved by the Legislature on the 19th of January, 1899, by a concurrent resolution in the following form:

"ASSEMBLY CONCURRENT RESOLUTION No. 6.

"APPROVING THE CHARTER OF THE CONSOLIDATED CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, IN THE STATE OF CALIFORNIA, VOTED FOR AND RATIFIED BY THE QUALIFIED VOTERS OF SAID CITY AND COUNTY, AT A SPECIAL ELECTION HELD THEREIN FOR THAT PURPOSE, ON THE 26TH DAY OF MAY, 1898.

"Whereas, The consolidated City and County of San Francisco, a municipal corporation, in the State of California, is now, and was at all the times herein referred to, a consolidated city and county containing a population of more than two hundred thousand inhabitants; and

"Whereas, At a special municipal election, duly held in said city and county on the twenty-seventh day of December, one

thousand eight hundred and ninety-seven, in accordance with law and the provisions of section eight of article eleven of the Constitution of said state, a board of fifteen freeholders, duly qualified, was elected in and by said city and county, and by the qualified electors thereof, to prepare and propose a charter for said city and county; and

“Whereas, The same was, on the twenty-fifth day of March, one thousand eight hundred and ninety-eight, signed in duplicate by all the members of said board of fifteen freeholders, and was, on said day, returned, one copy thereof to the mayor of said city and county, and the other to the county recorder of said city and county; and

“Whereas, Such proposed charter was then published in two daily newspapers of general circulation in said city and county of San Francisco, to wit: ‘San Francisco Call’ and ‘Daily Report,’ for more than twenty days, such publication in each instance having commenced within twenty days after the completion of said charter; and

“Whereas, Said charter was, within not less than thirty days after the completion of said publication, submitted by the mayor and board of election commissioners of said City and County of San Francisco, to the qualified electors of said city and county at a special election, previously duly called and thereafter held therein, on the twenty-sixth day of May in the year one thousand eight hundred and ninety-eight; and

“Whereas, The returns of said election were duly canvassed by the said mayor and board of election commissioners of said City and County of San Francisco; and

“Whereas, At said election a majority of such qualified electors of said city and county, voting at such special election, did vote in favor of and ratify said charter so proposed; and

“Whereas, Said mayor and board of election commissioners, after canvassing said returns, duly found and declared that a majority of such qualified electors voting at said special election had voted for and ratified said charter; and

“Whereas, The same is now submitted to the Legislature of the State of California, for its approval or rejection as a whole, with-

out power of alteration or amendment, in accordance with the provisions of section eight, of article eleven, of the Constitution of said state; and

“Whereas, The said charter so ratified is in the words and figures following to wit:

[Here follows a copy of the Charter.]

“STATE OF CALIFORNIA,
“City and County of San Francisco. } ss.

“This is to certify that we, James D. Phelan, mayor of the City and County of San Francisco, and Thomas J. Glynn, county recorder of said city and county, have compared the foregoing proposed and ratified charter with the duplicates mentioned therein, and find that the same is an exact copy thereof; and we further certify that the facts set forth in the preamble preceding said charter herein are true.

“Dated, San Francisco, Cal., December thirtieth, eighteen hundred and ninety-eight.

“JAMES D. PHELAN,

“Mayor of the City and County of San Francisco.

“THOS. J. GLYNN,

“County recorder of the City and County of San Francisco.

“Now, therefore, be it

“*Resolved by the Assembly of the State of California, the Senate thereof concurring* (a majority of all the members elected to each house voting for and concurring herein), that said charter of the City and County of San Francisco, as presented to, and adopted and ratified by, the qualified electors of said city and county, be and the same is hereby approved as a whole, for and as the charter of said City and County of San Francisco.”

In adopting a freeholders' charter the Legislature may act by concurrent resolution, without the approval of the Governor. *Brooks v. Fischer*, 79 Cal. 173; *In re Strand*, 21 Pac. Rep. 654; *People v. Hoge*, 55 Cal. 612; *People v. Gunn*, 85 Cal. 238.

The Legislature cannot conclusively determine whether or not the constitutional conditions precedent to the validity of the charter have been complied with. *People v. Gunn*, 85 Cal. 238.

When the charter takes effect.—By the provisions of this schedule, the charter, except for certain purposes, goes into effect on the 1st day of January, 1900. Section 8 of article XI of the Constitution provides that, if the charter is "approved by a majority vote of the members elected to each house, it shall become the charter of such city," etc. Under this provision there might be some question as to whether or not the charter does not take effect as soon as adopted by the Legislature; but it is not believed that this is the effect of the provision of the Constitution.

Population.—The question of the population of the city and county is determined by the United States Census and not by the act of February, 1897, (Stats. 1897, 28). In *re Mitchell*, 120 Cal. 384.

Effect of charter.—Charter to supersede existing charter: see Intro., p. 8.

Charter to supersede amendments to existing charter: see Intro., p. 10.

Charter to supersede laws inconsistent with charter: see Intro., p. 11.

Recording of charter.—A duplicate of the charter was delivered to the recorder of the City and County of San Francisco on the 26th day of March, 1898, who placed upon it the following indorsement:

"Received from the board of freeholders the within proposed new charter in the forenoon of the twenty-sixth day of March, in the year one thousand eight hundred and ninety-eight.

"THOS. J. GLYNN,

"Recorder in and for the City and County of San Francisco,

"By J. G. NOONAN, Deputy."

Unless a duplicate of the proposed charter is delivered to the mayor and recorder of the county, an election approving the charter is void. *People v. Gunn*, 85 Cal. 238.

Validity of charter — How determined.—The validity of a freeholders' charter may be determined upon a proceeding to oust the mayor and to annul the charter, if the proper parties are made defendants. The municipality, real or pretended, must be made a party. *People v. Gunn*, 85 Cal. 238.

APPENDIX.

Front-foot mode of assessment.—Since the foregoing pages were placed in the hands of the printer, the decision of the Supreme Court of the United States in the case of *Norwood v. Baker*, 19 Sup. Ct. Rep. 187, has come to the notice of the author. On page 205, *supra*, the cases were cited upholding the constitutionality of the so-called “front-foot” method of street assessment; but by reason of this decision a more extended discussion of the subject seems to be necessary. The Supreme Court of this state early upheld the validity of that method of assessment. So firmly was the validity of the method settled that the court refused to even consider the question in the case of *Jennings v. Le Breton*, 80 Cal. 8. But the decision of the Supreme Court of the United States in *Norwood v. Baker*, *supra*, seems to conclusively settle that the entire system of street assessments according to the front-foot method is unconstitutional and void.

The facts of that case were these: The statute of the State of Ohio provided that the expense of work upon streets should be assessed “on the abutting and such adjacent and contiguous or other benefited lots and lands in the corporation, either in proportion to the benefits which may result from the improvement, or according to the value of the property assessed, or by *the front-foot of the property bounding and abutting upon the improvement*, as the council . . . may determine.” The village of Norwood passed an ordinance declaring its intention to condemn and appropriate certain land for the purpose of opening a street, and providing that the cost should be assessed “*per front foot upon the property bounding and abutting on that part of Ivanhoe Avenue, as condemned and appropriated herein.*” The cost, having been assessed “*on each front foot of the several lots of land bounding and abutting on Ivanhoe Avenue,*” etc., this action was brought to restrain the village from enforcing the

assessment. Both the Circuit Court of the Southern District of Ohio (74 Fed. Rep. 997) and the Supreme Court of the United States held that the assessment was in violation of the Fourteenth Amendment, providing that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. In reaching this conclusion the Supreme Court said:

“Undoubtedly abutting owners may be subjected to special assessments to meet the expenses of opening public highways in front of their property—such assessments, according to well-established principles, resting upon the ground that special burdens may be imposed for special or peculiar benefits accruing from public improvements. . . . And according to the weight of judicial authority, the legislature has a large discretion in defining the territory to be deemed specially benefited by a public improvement, and which may be subjected to special assessment to meet the cost of such improvements.

“But the power of the legislature in these matters is not unlimited. There is a point beyond which the legislative department, even when exerting the power of taxation, may not go consistently with the citizen's right of property. As already indicated, the principle underlying special assessments to meet the cost of public improvements is that the property upon which they are imposed is peculiarly benefited, and therefore the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement. But the guaranties for the protection of private property would be seriously impaired, if it were established as a rule of constitutional law, that the imposition by the legislature upon particular private property of the entire cost of a public improvement, irrespective of any peculiar benefits accruing to the owner from such improvement, could not be questioned by him in the courts of the country. It is one thing for the legislature to prescribe it as a *general* rule that property abutting on a street opened by the public shall be deemed to have been specially benefited by such improvement, and therefore should specially contribute to the cost incurred by the public. It is quite a different thing to lay it down as an absolute rule that such property, whether it is in fact benefited or not by the opening of the street, *may be assessed by the front foot for a fixed*

sum representing the whole cost of the improvement, and without any right in the property owner to show, when an assessment of that kind is made, or is about to be made, that the sum so fixed is in excess of the benefits received.

“In our judgment the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, *to the extent of such excess*, a taking, under the guise of taxation, of private property for public use without compensation. We say ‘substantial excess,’ because exact equality of taxation is not always attainable, and for that reason the excess of cost over special benefits, unless it be of a material character, ought not to be regarded by a court of equity when its aid is invoked to restrain the enforcement of a special assessment.

“We have seen that by the Revised Statutes of Ohio relating to assessments, that the village of Norwood was authorized to place the cost and expense attending the condemnation of the plaintiff’s land for a public street on the general tax list of the corporation, §2263; but if the village declined to adopt that course, it was required by section 2264 to assess such cost and expense ‘on the abutting and such adjacent and contiguous or other benefited lots and lands in the corporation, *either in proportion to the benefits which may result from the improvement or according to the value of the property assessed, or by the front foot of the property bounding and abutting upon the improvement;*’ while by section 2271, whenever any street or avenue was opened, extended, straightened, or widened, the special assessment for the cost and expense, or any part thereof, ‘shall be assessed only on the lots and lands bounding and abutting on such part or parts of said street or avenue so improved, and shall include of such lots and lands only to a fair average depth of lots in the neighborhood.’ It thus appears that the statute authorizes a special assessment upon the bounding and abutting property by the front-foot for the entire cost and expense of the improvement, without taking special benefits into account. And that was the method pursued by the village of Norwood. The corporation manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whether such property was benefited or not to the extent of such cost.

“It is said that a court of equity ought not to interpose to

prevent the enforcement of the assessment in question, because the plaintiff did not show nor offer to show by proof that the amount assessed upon her property was in excess of the special benefits accruing to it by reason of the opening of the street. This suggestion implies that if the proof had showed an excess of cost incurred in opening the street over the special benefits accruing to the abutting property, a decree might properly have been made enjoining the assessment to the extent simply that such cost exceeded the benefits. We do not concur in this view. As the pleadings show, the village proceeded upon the theory, justified by the words of the statute, that the entire cost incurred in opening the street, including the value of the property appropriated, could, when the assessment was by the front foot, be put upon the abutting property, irrespective of special benefit. The assessment was by the front foot and for a specific sum representing such cost, and that sum could not have been reduced under the ordinance of the village even if proof had been made that the costs and expenses assessed upon the abutting property exceeded the special benefits. *The assessment was in itself an illegal one because it rested upon a basis that excluded any consideration of benefits. A decree enjoining the whole assessment was therefore the only appropriate one.*"

For these reasons the judgment of the Circuit Court was affirmed on the ground "that the assessment against the plaintiff's abutting property was under a rule which excluded any inquiry as to special benefits, and the necessary operation of which was, to the extent of the excess of the cost of opening the street in question over any special benefits accruing to the abutting property therefrom, to take private property for public use without compensation."

The theory of the statute passed upon in this case is substantially the same as the Vrooman Act and the provisions of this charter, and, however startling the proposition may be at this day, it would seem to be a conclusive determination that this method of assessment is unconstitutional.

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